

Case No. 3,576. DARLINGTON v. GROVERMAN.
[1 Cranch, C. C. 416.]¹

Circuit Court, District of Columbia.

July Term, 1807.

DEBT ON BOND—PRACTICE.

After oyer, and issue on the plea of payment, the plaintiff is not bound to produce the bond again.

DARLINGTON v. GROVERMAN.

Debt on a bond. Oyer and plea of payment.

Mr. Young and Mr. Taylor, for the defendant, contended that the plaintiff was obliged to produce the original bond at the trial, and cited Act Assem. [1792] p. 89, § 33; Drummond v. Crutcher, 2 Wash. [Va.] 218; Taylor v. Peyton, 1 Wash. [Va.] 252; Evans v. Smith, 1 Wash. [Va.] 72; Act Assem. p. 11; Peter v. Cooke, 1 Wash. [Va.] 257; Governor of Virginia v. Turner's Securities [Cases Nos. 16,970, 16,971]; Gordon v. Frazier, 2 Wash. [Va.] 130.

THE COURT did not hear Mr. Jones in answer; but said that the only thing which could make a difference between the law here and at Washington is the act of assembly; and the court does not perceive that that act requires a bond to be filed which is not produced in evidence. The issue is that the defendant has paid the money due on the bond, and the burden of proof lies on him. It is not incumbent en the plaintiff to give evidence of any fact admitted by the pleadings.

THE COURT said the point had been decided at the last term in Washington; and they thought the present case did not materially differ from that. After oyer and issue on the plea of payment the plaintiff is not bound to produce the bond again. The jury found a verdict for the defendant without any evidence of the payment, and THE COURT granted a new trial, without costs, upon the ground that the verdict was against law and without evidence.

DUCKETT, Circuit Judge, absent.

¹ [Reported by Hon. William Cranch, Chief Judge.]