

Case No. 4,612.

FAIRFAX v. FAIRFAX.

[1 Cranch, C. C. 292.]<sup>1</sup>

Circuit Court, District of Columbia.

March Term, 1806.<sup>2</sup>

ACTION AGAINST EXECUTORS—ISSUE OF PLENE ADMINISTRAVIT.

If the jury find for the plaintiff on the issue of plene administravit, the plaintiff shall have

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judgment de bonis testatoris, for his whole debt.

[See note at end of case.]

Non assumpsit et plene administravit, general replication and issue. Verdict: "We of the jury find the issues for the plaintiff [Ann Fairfax], and assess her damages at \$220.95."

Mr. Swann, for defendant [Fairfax's executor], moved, in arrest of judgment, that the jury ought to have found specially that the defendant had in his hands goods unadministered sufficient to satisfy the debt; and relied on the case of *Booth v. Armstrong*, 2 Wash. [Va.] 301.

THE COURT (CRANCH, Chief Judge, and FITZHUGH, Circuit Judge) were of opinion that the finding was sufficient to support the judgment, and said: If a particular sum of assets less than the debt claimed by the plaintiff had been found it would not have altered the judgment. It would still have been to recover the whole debt, de bonis testatoris. But the jury have in substance found that the defendant had assets sufficient to pay the debt, out of which the debt might have been made. They have found the issue for the plaintiff. The issue taken by the plaintiff, in her replication, is, that the defendant had at the time, &c., in his hands, goods and chattels of the testator to be administered more than sufficient to pay, &c., and out of which he might have paid, &c., and this she prays may be inquired of by the country; and the defendant likewise. There is no more necessity of the special finding on this issue than on the issue of non assumpsit. *Shipley's Case*, 8 Coke, 134; *Waterhouse v. Woodstreet*, Cro. Eliz. 592; *Gaudy v. Ingham*, Style, 88. See *Oxendam v. Hobdy*, Freem. 351; Br. Ex'r, pl. 34, pl. 82; *Newman & Babbington's Case*, Godb. 178; *Dorchester v. Webb*, Cro. Car. 373; Lex. test. 414.

[NOTE. On writ of error this judgment was reversed by the supreme court, Mr. Chief Justice Marshall delivering the opinion. It was held that the jury should have found specially the amount of assets in the hands of the executor, to enable the court to enter judgment on the verdict. *Fairfax v. Fairfax*, 5 Cranch (9 U. S.) 19.]

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

<sup>2</sup> [Reversed in 5 Cranch (9 U. S.) 19.]