

Case No. 4,613.

FAIRFAX v. FAIRFAX.

[2 Cranch, C. C. 25.]<sup>1</sup>

Circuit Court, District of Columbia.

July Term, 1811.

ACTION            AGAINST            EXECUTORS—ISSUE            OF            PLENE  
ADMINISTRATIVIT—EVIDENCE—PAYMENT BY EXECUTOR OF DEBT BARRED BY  
STATUTE.

1. Upon the issue of plene administravit, a surety in the administration-bond is a competent witness for the defendant.
2. If the defendant offer evidence of the payment of the testator's bond, he need not prove its execution by the subscribing witnesses.
3. The executor may pay a debt barred by the act of limitations.
4. Bills purchased and remitted to pay a foreign debt may be given in evidence as payments, if purchased and remitted before the writ was served on the defendant.

Assumpsit [by Ann Fairfax against Fairfax's executor]. Plea, plene administravit.

H. Gunnell, one of the sureties in the administration-bond, was admitted as a witness for the defendant, to prove plene administravit. (THRUSTON, Circuit Judge, absent, and FITZHUGH, Circuit Judge, doubting.)

CRANCH, Chief Judge, thought the interest too remote to disqualify the witness.

The defendant offered to prove that he had paid a bond of the testator.

E. J. Lee, for plaintiff, required proof by the subscribing witnesses that the bond was signed, sealed and delivered by the testator, and cited *Saunderson v. Nicholle*, 1 Show. 81.

THE COURT (THRUSTON, Circuit Judge, absent) decided that it was not necessary to produce more than prima facie evidence of the debt. If fraud be alleged, it ought to be proved. THE COURT also decided that an executor might pay a debt barred by the act of limitations.

The action was brought on the 18th of May, 1804. Certain debts were paid by the defendant's agent in England, in July and October, 1804. The bills to pay those debts were purchased by the defendant on the day of the date of the writ (18th May, 1804).

THE COURT left it to the jury to decide whether the bills were purchased before the service of the writ on the defendant, and directed them that if the bills were purchased and remitted for the purpose of payment before the service of the writ, it was a good payment on plene administravit.

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