

Case No. 4,915.

FOOTE v. NOLAND.

[5 Cranch, C. C. 399.]³

Circuit Court, District of Columbia.

March Term, 1838.

EXECUTORS—ACTION ON NOTE—PARTIES.

If a sealed note be given to R. H. F., one of the executors of Thomas Whittington, it is not necessary that all the executors should join in the action.

Debt on a sealed note for \$60, payable to It. H. Foote, one of the executors of Thomas Whittington.

R. J. Brent, for defendant [William Noland], contended that it is to be presumed from “the face of the note, that the money belonged to the estate of the testator; and that there were other executors who ought to be joined as plaintiffs; and prayed the court to instruct the jury that the plaintiffs alone cannot recover; but that all the executors ought to join whether they proved the will or not

Mr. Bradley, contra, Cited Biddle v. Wilkins, 1 Pet [26 U. S.] 686, 692.

THE COURT (THRUSTON, Circuit Judge, absent), refused.

Verdict for plaintiff. New trial granted, because the verdict was against the evidence.

³ [Reported by Hon. William Cranch, Chief Judge.]