

Case No. 5,449.

GILPIN v. CRANDELL.

{2 Cranch, C. C. 57.}¹

Circuit Court, District of Columbia.

Nov. Term, 1812.

ACTION ON ADMINISTRATION BOND.

An action cannot be maintained, under the laws of Virginia, upon an administration bond, until a devastavit shall have been established in a suit against the administrator.

GILPIN v. CRANDELL.

Debt [by Gilpin, judge of the orphans' court, for the use of Faxon] on the administration bond of Crandell, who was a surety in Dyson's administration bond, for the non-payment of a debt due from Dyson, the intestate, and for which a judgment had been recovered by Faxon against Dyson's administratrix. The defendant pleaded that Dyson's administratrix had performed the conditions of the administration bond. The plaintiff replied that she had not, in this: that Faxon had recovered judgment against "herde bonis intestatoris, for \$59, upon which a fieri facias was returned nulla bona, and that she had assets, but wasted them; to which there was a general replication and issue.

E. J. Lee, for defendant, contended that he had a right to prove a devastavit in this case, in the same manner as if the plea had been pleaded by Dyson's administratrix herself in a suit against her.

But THE COURT (nem. con.) was of opinion, under the decisions in Virginia, that this suit was not maintainable; as no devastavit had been established in a suit against Dyson's administratrix.

{See Case No. 4,705.}

¹ {Reported by Hon. William Cranch, Chief Judge.}