

Case No. 5,678.

GRAHAME v. COOKE.

[1 Cranch, C. C. 116.]¹

Circuit Court, District of Columbia.

March Term, 1803.²

OYER—PLEADING.

After plea of condition performed, replication, rejoinder, and special demurrer to the rejoinder, the defendant is not entitled to oyer of the plaintiff's letters of administration, nor to plead that the plaintiff is not administrator.

Debt on bond [by Grahame's administrator] with collateral condition. After plea of condition performed, and replication, rejoinder, and special demurrer to the rejoinder, Mr. Simms, for the defendant, prayed oyer of the plaintiff's letters of administration.

E. J. Lee, *contra*, cited 4 Bac. Abr. 113, 114, tit "Pleas and Pleadings," I. 12, 2; 5 Com. Dig. 478, 479,—that oyer cannot be demanded, after plea, nor after imparlance. And Roberts v. Arthur, 2 Salk. 497,—that upon the profert of a deed, it remains in court all that term, but no longer, unless it be controverted; but letters testamentary, or of administration, do not remain in court for the party may have occasion to produce them elsewhere. 36 Hen. VI. 30. THE COURT refused to grant oyer.

Mr. Simms, for the defendant, then asked leave to file a plea in bar that the plaintiff was not administrator, which THE COURT also refused.

[NOTE. This case was appealed to the supreme court, and reported in 3 Cranch (7 U. S.) 229, where the proceedings are given at length. There is no mention of oyer of letters testamentary, or of the plea in bar, but the decision of the lower court was reversed, and judgment entered for the defendant upon the demurrer in a brief opinion by Marshall, Chief Justice, to the following point: The suit was an action of debt upon a bond stated, in the declaration, to be dated October 3, 1799, but which, upon oyer being demanded, appeared to be dated January 3, 1799. It was held that this variance, even at this early stage, was fatal to the plaintiff's case; hence the reversal.]

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

² [Reversed in 3 Cranch (7 U. S.) 229.]