

Case No. 6,558.

HODGE V. HIGGS.

[2 Cranch, C. C. 552.]<sup>1</sup>

Circuit Court, District of Columbia.

April Term, 1825.

EVIDENCE—ORIGINAL ENTRIES.

If the clerk who made the original entries in the testator's books, be made executor, those entries are competent evidence in an action by the executor for goods sold and delivered by the testator to the defendant.

Assumpsit by the plaintiff, as executor of Hodge, for goods sold and delivered to the defendant in the testator's lifetime. The original entries in the testator's books had been made by the plaintiff while he was the clerk of the testator, and having proved them to be in his handwriting, and made in the testator's lifetime, and that he was then his clerk, he now offered them as evidence of the sale and delivery of the goods.

Mr. Mason, for defendant, objected that it was his voluntary act to qualify as executor; he might have refused to act.

THE COURT, however (*nem. con.*), was inclined to the opinion that the original entries, under those circumstances, were competent evidence for the plaintiff, and permitted them to be read to the jury, saying that they would grant a new trial if satisfied that the opinion was wrong.

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