

Case No. 8,962.

MAGRUDER'S CASE.

[2 Cranch, C. C. 626.]¹

Circuit Court, District of Columbia.

Dec. Term, 1825.

ADMINISTRATORS—NOTES TAKEN PERSONALLY—DECEASE—ACTION—ENTRY OF JUDGMENT.

If the administratrix of her deceased husband sell the goods and take notes payable to herself personally, bring suit on one of the notes, and die, and her administrator enter his appearance in the suit and obtain judgment, the court will not order the judgment to be entered upon the docket for the use of the administrator de bonis non of her husband, unless he can show that the sureties of the administratrix are insolvent, and that the balance of her administration account is against her.

Mary Ann Magruder, administratrix of Thomas Magruder, sold the goods of her intestate and took notes payable to herself personally, She brought suit upon one of the notes and died before judgment. Her administrator entered his appearance in the suit and obtained judgment. The administrator de bonis non on her husband's estate moved the court to order the judgment to be entered upon the docket for his use.

Mr. Key, contra. She has given an administration bond with sureties who are liable for this money. She may have paid debts upon the faith of these notes. She is liable upon her bonds only for the balance of funds which comes to her hands. It is better for her husband's estate because her sureties are directly and immediately liable for the money, whether it be recovered from the defendant or not.

Mr. Jones, for the administrator de bonis non. The administrator de bonis non has shown his title in equity to this money. To rebut this the administrator of Mrs. Magruder must show that she has paid debts to this amount, or that she has fully administered all that came to her hands. If the debtor be insolvent and she has used due diligence, she would not be liable for this fund.

THE COURT (THRUSTON, Circuit Judge, absent) said they would not deprive the legal plaintiff (the administrator of Mrs. Magruder) of his legal right, unless the administrator de bonis non could show that the sureties of Mrs. Magruder were insolvent, and that the balance of her administration account was against her.

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