

Fairfax's Executor Vs. Fairfax

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Court : US Supreme Court

Decided On : 1809

Appeal No. : 9 U.S. 19

Appellant : Fairfax's Executor

Respondent : Fairfax

Judgement :

Fairfax's Executor v. Fairfax - 9 U.S. 19 (1809)

U.S. Supreme Court Fairfax's Executor v. Fairfax, 9 U.S. 5 Cranch 19 19 (1809)

Fairfax's Executor v. Fairfax

9 U.S. (5 Cranch) 19

ERROR TO THE CIRCUIT COURT FOR THE

DISTRICT OF COLUMBIA AT ALEXANDRIA

SYLLABUS

If the defendant below intermarries after the judgment, and before the service of the writ of error, the service of the citation upon the husband is sufficient.

Upon the issue of *plene administravit*, the jury must find specially the amount of assets in the hands of the executor, otherwise the court cannot render judgment upon the verdict.

An executor is liable for the amount of assets in his hands, and for no more.

Error to the Circuit Court for the District of Columbia, sitting at Alexandria, in an action of assumpsit brought by the defendant in error against the plaintiff in error, as executor.

Upon the issues of *nonassumpsit* and *plene administravit*, the jury found a general verdict, which was recorded in this form: "We of the jury find the issues for the plaintiff and assess the damages to \$220.95." Upon which verdict the judgment of the court was

"That the plaintiff recover against the defendant her damages aforesaid in form aforesaid assessed, and also her costs by her about her suit in this behalf expended, to be levied of the goods and chattels of the said Bryan Fairfax, deceased, at the time of his death, in the hands of the said defendant to be administered, if so much, &c.;, but if he hath not so much, then the costs aforesaid to be levied of the proper goods and chattels of the said defendant; and the said defendant in mercy,"

&c.;

The error relied upon by the plaintiff in error was that the jury had not found the amount of assets in his hands to be administered.

Page 9 U. S. 20

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court to the following effect:

Page 9 U. S. 21

The verdict ought to have found the amount of the assets in the hands of the defendant to be administered.

The cases cited to show that the judgment must be for the whole sum, if the verdict find any assets, have been overruled. This is declared by Lord Mansfield in a case cited in Gwillim's edition of Bac.Abr., and the law is now well understood to be that the executor is only liable for the amount of assets found by the jury. In Virginia, the law has been so settled. The case cited from 2 Wash. Rep. is precisely in point. The counsel for the defendant in error attempted to show a distinction arising from the difference of form in which the verdicts were rendered. But the two verdicts appear to the Court to be precisely alike in substance.

The defendant in error relies on the form of the issue. She contends that as the replication alleges that the defendant has assets more than sufficient to satisfy the debt, the finding of that issue for the plaintiff below in effect finding that the defendant has assets more than sufficient to satisfy the debt, and if so, it is wholly immaterial what the real amount of assets is. But if this were the issue and the demand were \$500 dollars, if the jury should find that the defendant had assets to the amount of \$499 dollars, the judgment must be for the defendant.

But the law is not so. An executor is liable for the amount of assets in his hands, and not more.

The issue really is whether the defendant has any, and what amount of assets in his hands.

Judgment reversed.