

**GRAY vs. SAFFOLD'S ADMINISTRATORS.**

An administrator can maintain no action against an heir for the recovery of slaves of the intestate by virtue only of his general right as administrator.

THIS was an action of replevin, determined in the Pulaski circuit court, in September, 1842, before the HON. JOHN J. CLENDENIN, one of the circuit judges. Saffold's administrators sued Gray, one of the heirs, for a negro belonging to the intestate. Judgment for plaintiffs

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exceptions, setting out the evidence and instructions, in error. One of the instructions asked and refused was, that the plaintiffs could not maintain the action, unless it was necessary they should have possession in order to pay the debts of the estate.

The case was argued here by *Ashley & Watkins, Pike & Baldwin*, for plaintiff in error, and *Fowler & Borden*, contra.

*By the court, LACY, J.* The main question in this case is whether an administrator of an intestate can maintain an action for the recovery of slaves against the heir. It is certain he cannot, as a general principle; and so it has been determined in *Hill's administrators vs. Mitchell*. The law casts the decent of slaves upon the heir. Under certain circumstances they are made assets *sub modo* in the hands of the administrator for the payment of debts. If these circumstances were shown, whether or not he could maintain the action for the recovery of the possession, is a question upon which we express no opinion, as that point does not arise upon the record. Judgment reversed.

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