

Oxford. Aug 20th 1889

How A W. Tongue.

Greenboro.

Dear Sir

I beg leave to trouble you with an enquiry as to the proper practice under the "Code" in entering Judgment and issuing Execution against Executors and administrators ~~in support~~ ⁱⁿ the case of an action brought against an Executor or Administrator before the adoption of the Constitution upon a debt due before the war

The defendant pleaded only "Payment and set off" and Judgment is rendered against him since the adoption of the "Code" and the passage of the acts in relation to the settlement of the Estates of deceased persons

In which form is the said Judgment to be entered up?

Of course according to the ~~Code~~

law there is no difficulty about it,
but if according to the law that
went into operation the 1st day of July
I confess I do not see any way clearly

Formerly as you are aware
when an Executor confessed assets
by his plea, or they were fixed upon him
by verdict, the judgment was that
"the plaintiff recover his debt and costs
to be levied of the goods and Chattels
of the testator in the hands of the
Executor if they were to be found, and
if no goods of the testator could be
found, to levy the costs of the goods
and Chattels of the Executor -

The Execution of course followed
the judgment; upon the return
of "nothing found" - a *scire facias*
issued to the Executor to shew cause
why there should not be judgment
against him "De, Præsumptione"

Now if the case which I have
put comes within the old pra
ctice it is all plain enough
but if it is controlled by
recent legislation it is not

very well see how I am to pro
ceed. - If the latter course is to
be followed I will be greatly obli
-ged if you will give me your
views as to the form as minutely
as may be convenient to you,

And take the liberty of making
the application to you on account
of your well known familiarity
with the practice under the "Code"
and because the subject is of
much practical importance
at this time -

I am Sir most respectfully
Yours obedient
S^r H. Venable.

4. D. Danable
Oxford
N.C.

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013