

FARRELL v. KNAPP.

Case No. 4,684.

1. Cranch, C. C. 131.]<sup>1</sup>

Circuit Court, District of Columbia.

July Term, 1803.

INDEBITATUS ASSUMPSIT—EXPRESS PROMISE TO PAY CERTAIN SUM—OATH OF PLAINTIFF.

1. The plaintiff's own oath is not evidence in any case, unless made within one year from the date of the articles charged.
2. Upon general indebitatus assumpsit for two hundred dollars, for work and labor, there must be evidence of an express promise to pay a certain sum.
3. A special agreement to do the work, at certain prices, cannot be given in evidence, on a general indebitatus assumpsit.

Mr. Woodward having, as he supposed, proved all the plaintiff's account for work and labor, except a sum of £3. 3s. 6d. for work done by the plaintiff himself, moved the court to instruct the jury that the plaintiff's own oath should be taken as evidence of the sum of £3. 3s. 6d. The oath was made this day. The account did not state when the work was done, but the cause has been depending in court more than a year. The whole account amounted to £94.

THE COURT refused to give the instruction.

Mr. Mason then moved the court to instruct the jury that the evidence which tended to prove that a special agreement had been made as to the prices, did not support the general count of indebitatus assumpsit for work and materials. The testimony was, that it had been agreed between the plaintiff and defendant that the price of laying the bricks should be twenty-one shillings a thousand, and the arches at a certain price.

THE COURT were of opinion, that upon this count for two hundred dollars for work and labor, the plaintiff must prove an express assumpsit for a certain sum; and that there being no count on the special agreement it cannot, be given in evidence in this action.

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