GARDNER v. PEYTON.

Case No. 5,234.

{5 Cranch, C. C. 561.}[1]

Circuit Court, District of Columbia. May Term, 1839.

PLEADING—NON ASSUMPSIT WITHIN FIVE YEARS UPON PROMISE TO COLLECT AND ACCOUNT FOR MONEY.

1. Non assumpsit within five years, &c, is not a good plea to an action of assumpsit upon a promise to collect money and account for it.

2. The cause of action does not arise until the money has been received by the defendant and demanded by the plaintiff.

Assumpsit by the defendant {F. Peyton, Jr.}, as an attorney at law to collect a debt due to the plaintiff's intestate {Z. Gardner}, and to account for the same when collected. The declaration avers that the defendant collected the money, but refused to pay it to the plaintiff on demand.

THE COURT (THRUSTON, Circuit Judge, absent,) on general demurrer, decided that the plea of non assumpsit infra quinque aunos, was not a good plea to an action upon such a promise.

At the trial, upon the issue on the plea of action non accrevit, Mr. Neale, for the defendant, contended that the action accrued upon the receipt of the money by the defendant, and cited 3 Bl. Comm. 25; Laws Va. Nov. 19, 1792, p. 97, § 12; Laws Ya. Dec. 19, 1792, for limitation of actions, p. 107, § 4; Taylor v. Armstead, 3 Call, 200; Kinney v. McClure, 1 Rand. {Va.} 284; 2 Har. Dig. 1458; Manning's Index, 57; 2 Tuck. "Bl. Comm. 388, 430; and thereupon moved the court for an instruction to the jury to that effect.

But THE COURT refused, and stopped Mr. Taylor, for the plaintiff, who was about to reply; being of opinion that the cause of action did not accrue until demand of payment, and the defendant's refusal to pay.

Verdict for the plaintiff.

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