

Case No. 7,214.

JANNEY ET AL. V. SMITH.

[2 Cranch, C. C. 499.]<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1824.

OFFER OF SET-OFF—REJECTION BY JURY—BAR TO FURTHER ACTION.

A claim, which has been pleaded or offered in evidence as a set-off, and rejected by the verdict of the jury, will not maintain an action.

Assumpsit, for the defendant's proportion of one Johnson's expenses in Tennessee, upon a certain business. Plea, non assumpsit, and issue.

The defendant showed that the plaintiffs had offered and submitted this claim to the jury in bar of a former action brought by this defendant [Joseph] Smith, against these plaintiffs, Thomas Janney & Co., and that the jury did not allow it.

Mr. Swann, for defendant, contended that the plaintiffs are bound by that verdict, and cannot set up the claim again as a substantive cause of action.

Mr. Hewitt, contra. In the case of Scott v. English in this court [unreported], after the jury had rejected Scott's claim of set-off, he brought a suit upon it and recovered. The principle that multiplicity of action is to be prevented does not apply; for no former suit has been brought upon it.

Mr. Swann, in reply. In the case of Scott v. English, the objection was not taken.

THE COURT (THRUSTON, Circuit Judge, absent) decided, and instructed the jury that if they should be satisfied by the evidence, that the present claim of the plaintiffs had been set up and insisted upon by the present plaintiffs as a set-off in the former action of Smith against them, and that it was not afterwards withdrawn by them from the consideration of the jury, before they retired to consider of their verdict, and they gave a verdict upon the whole matter; that verdict was conclusive against the plaintiffs in the present action.

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