

Case No. 7,471.

JONES v. JOHNS.

[2 Cranch, C. C. 426.]<sup>1</sup>

Circuit Court, District of Columbia.

Oct. Term, 1823.

WITNESS—REFRESHING MEMORY.

A witness will be permitted to refresh his memory as to the items of an account for work and labor by the original entries only, made by himself, or by another in his presence; and although he has no distinct recollection of each particular item charged, yet if he has a distinct recollection of such work as is charged in the account generally, being done, and after having refreshed his memory, if he can swear that the work was done as charged in such account, his testimony will be competent evidence.

Assumpsit [by Richard Jones] upon a blacksmith's bill of work done for the defendant's plantation, from September, 1816, to August, 1822, amounting to \$1,349.56.

Mr. Marbury, for defendant [L. H. Johns], contended that as the witness had no distinct recollection of the particular items independent of the entries in his handwriting in the day-book, his testimony was not competent evidence to the jury.

THE COURT, (nem. con.) after hearing argument and authorities, gave the following opinion: The witness shall be permitted to refresh his memory only from the original entries made by himself or another in his presence. In addition to this, if he has no distinct recollection, independent of such entries, of each particular item charged, he must, at least, have a distinct recollection of such work as is charged in the account generally, being done by the plaintiff for the defendant; and if, after having so refreshed his memory, he can swear that the work was done as charged in such entry, his testimony will be competent evidence.

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