

Case No. 7,498.

JONES V. SMOOT ET AL.

{2 Cranch, C. C. 207.}<sup>1</sup>

Circuit Court, District of Columbia.

June Term, 1820.

PARTIES TO ACTIONS—CONTRACT OF SURETY.

A third person who, at the request of a contractor, executes the contract, cannot maintain an action against the contractor upon that contract.

This was a special action upon the case, on a written contract executed by the defendant George A. Smoot, as principal, and the other defendant [John Gozler], as surety, to deliver fifty cords of wood to the plaintiff, Jones. George A. Smoot being unable to comply with the contract within the time limited, Samuel Smoot, at the request of George A. Smoot and the plaintiff, Jones, without the knowledge of Gozler, delivered the wood, and took an assignment of the contract, and gave George A. Smoot six months to return him the wood.

Mr. Key, for defendant, contended that the contract was discharged by the delivery of the wood by Samuel Smoot; and that if it was not, yet the plaintiff, by giving six months' indulgence to G. A. Smoot without the consent of Gozler, had discharged the latter from his liability.

THE COURT (MORSELL, Circuit Judge, contra) instructed the jury that if they should be of opinion from the evidence that the wood was delivered by Samuel Smoot to Jones, at the request of George A. Smoot, and in compliance with the contract between Jones and the defendants, the plaintiff could not recover in that action.

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