LOVEJOY v. WILSON.

Case No. 8,551.

[1 Cranch, C. C. 102.][1]

Circuit Court, District of Columbia. Dec. Term, 1802.

WITNESS—INTERESTED IN SUBJECT—TESTIMONY UPON COLLATERAL FACTS—ASSUMPSIT—ACCOUNT—NO ACCOUNT FILED—MONEY LENT.

1. In assumpsit for goods sold and delivered, the defendant may prove a partnership between the plaintiff and the witness by the witness.
2. In a count "for sundry matters properly chargeable in account," if no account be annexed, the words which refer to an account as annexed, may be rejected; and money lent may be given in evidence upon that count.

Assumpsit, for stone and sand sold and delivered. The defendant produced Owen McGlue as a witness to prove a partnership between the witness and the plaintiff, and that this was a joint contract.

Mr. Gantt, for plaintiff, objected that the witness was interested.

THE COURT decided that he was a competent witness to prove the partnership; but should not be compelled to give evidence of payments made by the defendant during the partnership. (Quaere.)

One of the counts, in the case was indebitatus assumpsit, "for sundry matters properly chargeable in account as by a particular account thereof, herewith into court brought, may more fully appear." No account was filed. The plaintiff offered evidence of money lent. The defendant objected that it could not be given on that count.

KILTY, Chief Judge, was of opinion that the evidence was applicable to that count. No account being filed, the words "as by a particular account," &c., must be rejected as surplusage, and then the count will stand as a general indebitatus assumpsit "for sundry matters chargeable in account;" and money lent is a matter chargeable in account.

MARSHALL, Circuit Judge, and CRANCH, Circuit Judge, did not object.

(Quaere as to this point.)

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