

Case No. 9,309.

MAUPIN ET UX. V. PIC.

[2 Cranch, C. C. 38.]¹

Circuit Court, District of Columbia.

Dec. Term, 1811.

PLEADING AT LAW—CONTRACT—ASSUMPSIT—PLEA IN BAR—ANOTHER SUIT
PENDING.

1. When a contract has been executed, indebitatus assumpsit will lie for the amount due upon it.
2. Evidence of the pendency of a suit between the plaintiff Catherine alone, by the name of Catherine Frisset, against the present defendant, for the same cause of action, at the time of bringing the present suit, will not support the issue upon the plea of the pendency of a suit between the parties to the present suit.

[This was an action at law by Maupin and Catherine, his wife, against Francis Pie.]
Indebitatus assumpsit for work and labor.

Mr. Morsell, for defendant, contended that as there was a letter stating the terms to be twelve dollars a month, and no count upon that special agreement, the plaintiff could not recover upon the indebitatus assumpsit. 1 Com. Cont. 228.

But THE COURT (FITZHUGH, Circuit Judge, absent) said that, when a contract has been executed, indebitatus assumpsit will lie for the amount due upon it.

There was a plea in bar, that, at the time of commencing this suit, there was another suit depending between the same parties for

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the same cause of action. The evidence to support this issue was of a suit by Catherine Frisset alone, who was one of the present plaintiffs, for the same cause of action, which was discontinued after the present suit was brought.

THE COURT instructed the jury that it was not such a suit between the same parties as would support the issue on the part of the defendant.

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