

NORWOOD v. SUTTON.

{1 Cranch. C. C. 327.}³

Circuit Court, District of Columbia. July Term, 1806.

CONTINUANCE—SUPPLEMENTAL
AFFIDAVITS—PLEA IN ABATEMENT.

1. Supplemental affidavits will not be received upon a motion for the continuance of a cause.
2. To support a plea in abatement, for not naming all the joint promisors, it is not necessary for the defendant to prove that the plaintiff knew he was dealing with a copartnership.

Assumpsit for freight of goods. Plea in abatement, that the promise, if any, was made by the defendant jointly with one John Mandeville.

Mr. Jones, for defendant, moved for a continuance of the cause on affidavit.

THE COURT thought the affidavit not sufficient, and refused to receive a supplemental affidavit, on the ground that it is a practice leading to perjury. THE COURT referred to the case of *Dawson v. Boyd* [Case No. 3,667], at Washington, on a habeas corpus from Alexandria.

Mr. Jones prayed the court to instruct the jury, that it is not necessary for the defendant to prove that the plaintiff knew of the partnership. *Rice v. Shute*, 5 Burrows, 2611, and *Abbott v. Smith*, 2 W. Bl. 947; *Wats. Partn.* 240.

Mr. Youngs, contra. The plaintiff is not bound to know the partners, but if the plaintiff knew he was dealing with a company, then the defendant may plead partnership. The defendant must show that the plaintiff knew that the defendant was in partnership with somebody. *Wats. Partn.* 235.

THE COURT (nem. con.) instructed the jury, that upon this issue on a plea in abatement, it is not necessary for the defendant to prove that the plaintiff

knew of a partnership between the defendant and any other person, nor that Mandeville was his partner at the time of the contract, that fact not being in issue.

³ [Reported by Hon. William Cranch, Chief Judge.]

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