

PILES V. PLUM ET AL.

[2 Cranch, C. C. 32.]¹

Circuit Court, District of Columbia. Nov. Term, 1811.

WITNESS—COMPETENCY OF PARTIES TO JOINT ACTION.

In a joint action of trespass against two defendants, if they plead severally, they may be mutually examined as witnesses for each other. Quære.

Trespass for beating a mare, and breaking her leg with an axe, so that she died.

The defendants, Plum and Swann, had been taken different times, and had pleaded severally.

Mr. Taylor and E. J. Lee, for defendants, offered to examine the defendant Swann as a witness for Plum, the other defendant.

The plaintiff's counsel, Mr. Swann, objected; and contended that there could be but one judgment, although the verdicts might be several.

THE COURT, with some hesitation (FITZHUGH, Circuit Judge, absent,) permitted the defendant Swann to be examined. See *U. S. v. Pawling*, in the supreme court of the United States, 4 Cranch [8 U. S.] 221; *Harper v. Smith* [Case No. 6,092], in this court at July term, 1808; *U. S. v. Hunter* [Id. 15,425], at ⁶⁹¹ November term, 1807; and *U. S. v. Abbot* [Id. 14,415], in the district court. But see below, *Johnson v. Chapman* [Id. 7,378].

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