

POST ET AL. V. SARMIENTO.

[2 Wash. C. C. 198.]¹

Circuit Court, D. Pennsylvania. April Term, 1808.

ROLE TO SHOW CAUSE OF ACTION—ANOTHER
SUIT PENDING.

Where, on a rule to show their cause of action, the plaintiffs have produced a positive affidavit of debt, the defendant cannot give evidence, that a suit for the same cause of action has been instituted in another court.

Rule upon the plaintiff to show his cause of action. The plaintiff produced a positive affidavit of debt, due for goods taken and sold by the defendant. The defendant was proceeding to state, that a certain M'Connichie, the agent of the plaintiff, in respect to this claim, had issued a writ against the defendant, for the same cause of action, in the supreme court, or court of common pleas, of this state; when the court referring to the standing rules of the court, said, that the inquiry contemplated by the defendant, could not be gone into.

Dallas & Ingersoll, for defendant, cited the case of *Conframp v. Bunel* [Case No. 3,098], and 2 East, 454.

Mr. Tilghman, for plaintiff.

There was no affidavit at all in the case of *Conframp v. Bunel*; and, in the case from 2 East, it appeared that the action, depending in the other court, was the same as that in which the motion was made.

BY THE COURT. It is impossible to decide whether the action, said to be depending in the supreme court of this state, is for the same cause of action, and is at the suit of the plaintiff in this cause, without deciding a point, upon which probably the whole merits of the cause depend. The rule of the court is imperative, and ought to be adhered to. Rule discharged.

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