

SIMMS v. TEMPLEMAN.

{5 Cranch, C. C. 163.}¹

Circuit Court, District of Columbia.

March Term, 1837.

NEW TRIAL—MISTAKE BY JURY IN TAKING PAPERS.

A new trial will not be granted because the jury, by mistake, took out with them the plaintiff's account, if it be withdrawn from them in a few minutes afterwards, by order of the court.

This was an attachment under the Maryland act of 1795 (chapter 56). The garnishee [Templeman] pleaded *nulla bonâ*, and *non assumpsit* by the defendant [McCleary]. The plaintiff's account, for work and labor, was annexed, by a wafer, to the warrant of the justice of the peace to the clerk to issue the attachment; and upon the back of the warrant was written the plaintiff's short note of his cause of action, which stands in the place of a declaration, and upon which the issue was joined upon the plea of *non assumpsit*. The jury took out with them the short note, to which were annexed the warrant and account, and an affidavit of the plaintiff, made in compliance with the act of 1795 (chapter 56). The account had been proved by a witness, and the amount had been stated to the jury, and was also stated in the short note.

A few minutes after the jury had retired, Mr. Marbury, for plaintiff, informed the court that the account had been thus, by mistake, taken out by the jury, and requested the court to send to the jury for the paper, which they did, and informed them that they had taken it by mistake; and it was thus withdrawn from them.

The verdict being for the plaintiff, Mr. C. Cox, for defendant, moved for a new trial, because the account had been thus taken out by the jury.

But THE COURT (MORSELL, Circuit Judge, absent) refused.

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

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