

Case No. 17,722.

WILLIAMS v. HOPKINS.

[2 Cranch, C. C. 98.]²

Circuit Court, District of Columbia.

April Term, 1814.

ASSUMPSIT FOR COSTS OF APPEAL.

Assumpsit will not lie for the costs of appeal, against the person for whose use the appeal was prosecuted, and for whose use it was entered upon the record of the court of appeals; and a transcript of the record is not admissible evidence to support the action.

The suit in equity of Hodgson, for the use of Hopkins, v. Williams and Clark, was carried up by the plaintiff to the court of appeals of Maryland, where the plaintiff failed to prosecute his appeal with effect Williams and Clark brought the present action of assumpsit against Hopkins, for whose use the appeal was prosecuted, to recover 94 dollars and 1⅓ cent costs on the appeal.

E. J. Lee, for plaintiff, offered in evidence a transcript of the record of the court of appeals in the suit of Hodgson, for the use of Hopkins, v. Williams and Clark.

C. Lee, for defendant, objected, that the record contained no evidence of any obligation or promise of the defendant to pay. There must be a promise in writing, for it is the debt of another. The act of Maryland of 1796, c. 43, § 13, applies only to actions at law, not to suits in equity; and if it did, the remedy must be by attachment, as provided by the statute; or, if it has become a debt of record, the remedy is by an action of debt. The assumpsit is merged in the higher remedy.

E. J. Lee, in reply. The record is admissible to prove that the suit was prosecuted for the benefit of Hopkins. The remedy by attachment prescribed by the Maryland statute, is only cumulative. That statute did not create a new obligation, and if it did, it is applicable only to actions at common law, originally "instituted" for the use of a third person.

THE COURT (THRUSTON, Circuit Judge, absent) rejected the transcript of the record as evidence.

² [Reported by Hon. William Cranch, Chief Judge.]