

1810.

Dent's Adm'r.
vs
Scott

having been certified by *Thomas Jennings* under the seal of the land office, and the same being without date, and the court below having referred the same to the jury to determine whether they were genuine or not. This court dissent from the opinion expressed in the *second* bill of exceptions.

It of right belongs to the court to determine on the legal sufficiency of the facts and circumstances which will warrant the jury in presuming and finding a patent; and this court are of opinion, that the court below erred in not directing the jury that the proof in this case was insufficient in law for the jury to presume a grant from the proprietary, and they dissent from the opinion in the *third* bill of exceptions.

GANTT, J. dissented from the opinion of this court as to the *second* and *third* bills of exceptions.

JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

JUNE.

DENT'S ADM'R. VS. SCOTT.

Where it appears by the record that before the defendant's impleading, and afterwards in the first plea by him pleaded, he came and defended the wrong and injury, &c. such defence need not be repeated in the other pleas by him pleaded.

If the prior counts in a declaration in *assumpsit* set out a consideration, and the last count refers to them, and is founded on the consideration specified in them, it incorporates so much thereof in the last count as to render it valid.

APPEAL from *Baltimore* county court. *Assumpsit*, brought by the appellee against the appellant on the 14th of March 1801. The declaration contained the following counts: *First*. "That whereas on the 15th day of April in the year 1794, at *Baltimore* county aforesaid, in consideration that *Scott*, at the special instance and request of *Dent*, in his life-time, would deliver to *Dent* 100 barrels of superfine flour, and 50 barrels of fine flour, at or before the 15th of July of the same year, he, *Dent*, in his life-time, then and there undertook and promised *Scott* to pay him the sum of \$8 for each and every barrel of said flour, at two months next after the delivery thereof; and that he, *Scott*, confiding in the promise of *Dent*, so made by him in his life-time, afterwards, to wit, on the 15th of July 1794, at the county aforesaid, did deliver to *Dent*, in his life-time, 100 barrels of superfine flour, and 50 barrels of fine flour, whereof *Dent* in his life-time afterwards, to wit, on the same day and year last mentioned, at the county aforesaid, had notice; and by reason of the premises, and according to the said promise and assumption of *Dent*, so made by him, he, *Dent*, in his life-time, became liable to pay, and ought to have paid, to *Scott*, the sum of \$8 for each and every of the said 100 barrels of