

**Henderson Vs. Moore**

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**SooperKanoon Citation :** [sooperkanoon.com/78444](http://sooperkanoon.com/78444)

**Court :** US Supreme Court

**Decided On :** 1809

**Appeal No. :** 9 U.S. 11

**Appellant :** Henderson

**Respondent :** Moore

**Judgement :**

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**9 U.S. (5 Cranch) 11**

*ERROR TO THE CIRCUIT COURT*

*OF THE DISTRICT OF COLUMBIA*

## **SYLLABUS**

The refusal of the court below to grant a new trial is not error.

Upon the plea of payment to an action of debt upon a bond conditioned to pay five hundred dollars, evidence may be received of the payment of a smaller sum with an acknowledgment by the plaintiff that it was in full of all demands, and from such evidence, if uncontradicted, the jury may and ought to infer payment of the whole.

On the plea of payment to an action of debt upon a bond, for \$500, dated in 1781, the defendant offered evidence to prove that in the year 1797 the plaintiff acknowledged that he had received of the money of the defendant to the amount of about \$1,000, of one Willoughby Tibbs, out of the amount of a decree which the defendant had obtained against him for \$3,000, and that the money which he so received was in full of all his claims against the defendant, the plaintiff having paid for the defendant several sums of money. There was no settlement made nor any receipt given.

"Whereupon the plaintiff prayed the court to instruct the jury that if from the evidence it should be satisfied that the bond had not been fully paid off, no declaration of the plaintiff 'that his claims against the defendant were all satisfied' would be a bar to his recovery in this action, which instruction

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the court refused to give as prayed, but directed the jury that if it should be satisfied by the evidence that the defendant, in the year 1797, paid the plaintiff a sum of money less than the amount mentioned in the condition of the bond, which the plaintiff at that time acknowledged to be in full satisfaction of all his claims against the defendant, such payment and such acknowledgment are competent evidence upon the plea of payment, and that the jury may and ought to presume therefrom that the whole sum mentioned in the condition of the said bond has been paid to the plaintiff unless such presumption be repelled by other evidence in the cause, to which refusal and instruction the plaintiff excepted."

The verdict being for the defendant, his counsel moved the court for a new trial, and grounded his motion upon sundry affidavits tending to prove that the whole amount of the bond remained due to the plaintiff, and that he was surprised by

unexpected testimony at the trial. But the court refused to grant a new trial.

Two errors were assigned.

1. That the court below refused a new trial.
2. That the court ought to have given the instruction to the jury as prayed by the plaintiff, and ought not to have given the direction which they did.

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court that there was no error in the opinion of the court below. A part of the money due on the bond

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might have been paid before, and such an acknowledgment, upon receipt of a sum smaller than the amount of the condition of the bond, was good evidence upon the plea of payment.

*Judgment affirmed with costs.*