

Case No. 1,326.

BENNETT v. WILSON.

[1 Cranch, C. C. 446.]¹

Circuit Court, District of Columbia.

Nov. Term, 1807.

CONTINUANCE—DILIGENCE—EVIDENCE—BOOK ACCOUNT.

1. The court will not continue a suit at law, at the motion of the defendant, on the ground that the plaintiff had not answered a bill of discovery, he being absent, and the bill seeking relief as well as discovery.

[See *Marsh v. Hulbert*, Case No. 9,116.]

2. The defendant's book of accounts in his own handwriting is not evidence for him, al though it contains the first entry.

Mr. C. Lee, for the defendant, moved for a continuance of the suit at law, on the ground of a bill for a discovery not answered, and now ready to be taken for confessed, the defendant. Bennett, being absent, and the usual notice having been given by publication, and of the death of Thompson, the most material witness. If a bill for a discovery be taken for confessed, the suit at law will be perpetually enjoined. 2 Har. Ch. Pr. 231, 233.

Mr. Swann, contra. The English practice applies only to eases where the party is in contempt.

THE COURT (DUCKETT, Circuit Judge, absent) refused to continue the cause on the ground that Bennett had not appeared to the bill for discovery; because it also sought general relief, and prayed an injunction, stating all the grounds of defence to the suit at law, and drew the whole subject-matter into equity. There was no affidavit stating that other testimony could not be had in lieu of Thompson's; and Wilson may obtain an injunction upon giving security. The plaintiff at law ought to have a judgment for his security.

Mr. C. Lee, for the defendant, on the trial offered the defendant's book of accounts in the defendant's own handwriting, and said it was the original entry of the transaction and settlement of the account upon which the promissory note was given.

But THE COURT (DUCKETT, Circuit Judge, absent,) refused to permit it to be read in evidence.

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