

Case No. 1,911.

BROADWELL v. McCLISH et al.

[1 Cranch, C. C. 4.]¹

Circuit Court, District of Columbia.

April Term, 1801.

EVIDENCE—BEST AND SECONDARY—ABSENCE OF SUBSCRIBING WITNESS.

The fact that the plaintiff's counsel had made diligent inquiry and could not hear where the

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subscribing witness lived, is not sufficient to dispense with his testimony, if it appears that he was in the country.

[See *Clarke v. Courtney*, 5 Pet. (30 U. S.) 319; *Cooke v. Woodrow*, Case No. 3,181; *Sampson v. Johnson*, Id. 12,281; *Whann v. Hall*, Id. 17,478; *Rhodes v. Rigg*, Id. 11,749.]

At law. Assumpsit [by Simon Broadwell] against the defendants [McClish and Wolves], as indorsers of James Patterson's note.

There was a subscribing witness to the note, and in order to induce the court to dispense with proof by the subscribing witness, E. J. Lee, counsel for the plaintiff, made affidavit that he had made diligent inquiry and could not hear where the subscribing witness lived. The defendant produced a witness who testified that he saw the subscribing witness in Baltimore last February, and that he was working at his trade there.

THE COURT refused to dispense with his testimony, and the plaintiff became nonsuit.

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