

Case No. 1,933.

BROOKE v. PEYTON.

[1 Cranch, C. C. 96.]¹

Circuit Court, District of Columbia.

Nov. Term, 1802.

EVIDENCE—PROOF OF HANDWRITING.

Comparison of handwriting is evidence to prove the publication of a libel.

[See note at end of case.]

At law. Case, for a libel.

Mr. Jones, for defendant, prayed the court to instruct the jury that evidence by comparison of hands, is not sufficient to prove the publication.

The court unanimously refused to give the instruction.

Bill of exceptions taken. Verdict for the plaintiff \$525 damages. But the defendant did not prosecute a writ of error.

[NOTE. For denial of defendant's motion for a new trial. See Case No. 1,934. The general rule of the common law does not allow the comparison of handwriting by courts and juries. *Turner v. Foxall*, Case No. 14,255; *Strother v. Lucas*, 6 Pet. (31 U. S.) 763; *Martin v. Taylor*, Case No. 9,166; *Macubbin v. Lovell*, Id. 8,928. Comparison is inadmissible to prove a crime (*U. S. v. Craig*, Id. 14,883; *U. S. v. Prout*, Id. 16,094; *U. S. v. Jones*, 10 Fed. 469), notwithstanding that by the state statute such comparison is allowable (*U. S. v. Jones*, supra). But See *U. S. v. Lamed*, Case No. 15,565; *U. S. v. Wright*, Id. 16,773; *U. S. v. Chamberlain*, Id. 14,778. There is an exception to this rule, however, and the comparison may be restricted to establish writing already in evidence, and not introduced for the mere purpose of comparison. *Medway's Case*, 6 Ct Cl. 421, and case cited; *Moore v. U. S.*, 91 U. S. 270; *U. S. v. Chamberlain*, supra.]

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