

**Case No. 1,934.**

BROOKE v. PEYTON.

[1 Cranch, C. C. 128.]<sup>1</sup>

Circuit Court, District of Columbia.

June Term, 1803.

## NEW TRIAL—NEWLY-DISCOVERED EVIDENCE.

A new trial will not be granted on affidavit that the plaintiff has since discovered testimony to discredit a witness who was examined at the trial, if that witness be not the only witness to the point on which he testified.

[See note at end of case.]

[At law. Action on the case for libel. There was a verdict and judgment for plaintiff (Case No. 1,933), and defendant moves for a new trial. Denied.]

Motion for new trial on the ground, that since the trial [Case No. 1,933] the defendant had discovered evidence, before unknown to him, tending to discredit Violet, the principal witness against the defendant.

New trial refused. The only doubt was whether the discovery of evidence tending to discredit a witness who testified to circumstances only tending to prove the making and publishing the libel, was sufficient ground for a new trial; the witness not being the only witness to that point.

MARSHALL, Circuit Judge, absent.

[NOTE. A ca. sa. issued on the judgment, and, on its return non est, an alias capias issued under Rev. Code Va. § 309. a motion was made for execution of a forthcoming bond. The clerk added the costs of the alias to the judgment, and defendant appealed to the supreme court upon a bill of exception to the opinion of the circuit court upon the motion sustaining the clerk's action, and the determination of the circuit court was sustained. Peyton v. Brooke, 3 Cranch (7 U. S.) 92.]

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]