

Case No. 2,085.

The BUCKEYE STATE.

[1 Brown, Adm. 65.]¹

Circuit Court, D. Michigan.

June, 1857.

PRACTICE IN ADMIRALTY—APPEAL—DEPOSITION.

A deposition, entitled in the district court, but not received by the clerk until after the trial there, and not sent up as a part of the record of that court, cannot be read on appeal.

On motion to suppress deposition. The cause was tried in the district court at Detroit, on the 8th day of December, A. D. 1856. On the same day the deposition of one McChesney was taken in Chicago, but did not reach Detroit until December 10th—too late to be read on the trial. On the case being appealed, the clerk made a memorandum on his transcript of the receipt of the deposition, and sent the same unopened to the clerk of the circuit court.

John S. Newberry, for claimant, moved to suppress the deposition: (1) Because not taken in the circuit court, or in any cause therein pending. (2) Because the same was not read on the trial of the cause below, nor a transcript of the same returned to this court

Levi Bishop, for libellant.

MCLEAN, Circuit Justice. As the deposition did not arrive until after the trial in the district court, and was not in evidence there, it cannot be read as a part of the record of that court sent here on appeal. Not being taken, or entitled in this court, it cannot be considered as evidence taken on appeal. The motion must be granted. Deposition suppressed.

¹ [Reported by Hon. Henry B. Brown, District Judge, and here reprinted by permission.]