

**Case No. 2,272.**

BYRNE v. HOLT.

[2 Wash. C. C. 282.]<sup>1</sup>

Circuit Court, D. Pennsylvania.

Oct. Term, 1808.

**VACATING JUDGMENT—WARRANT OF ATTORNEY—RESIDENT PARTIES.**

A judgment entered on a bond with warrant of attorney, was set aside, the defendant having, some months before the time of executing it, resided in this state, and describing himself in the bond, as late a resident of the state of Delaware.

The defendant obtained a rule upon the plaintiff, to show cause why the judgment entered in this case, and the execution, should not be set aside. The judgment was entered in the clerk's office on a bond, with a power of attorney to confess judgment, dated in September, 1806. The judgment

was entered in December, 1806, and an execution issued, which was levied. The ground of the motion was, that the plaintiff and defendant were both citizens of this state. To prove that the defendant was so, a deposition was read, stating, that in July, 1806, the defendant, with his family, was residing on land in this state, which he had rented, and was carrying on business as a merchant. The bond stated the defendant to be late of Delaware state. [Rule made absolute.]

Mr. Ross, for plaintiff.

Mr. Shoemaker, for defendant.

**BY THE COURT.** If this had been a case of a plea to the jurisdiction, the evidence would have been sufficient to prove the allegation in the plea, that Holt was a citizen of Pennsylvania at the time the judgment was rendered. It is proved, that in July, 1806, he was living with his family, and keeping house on rented land in this state, and carrying on business as a merchant. In September, the bond states that he had been a resident of the state of Delaware, and of course that he was not then so. This is so strongly corroborative of the fact proved by the deposition, that we must consider that he continued an inhabitant and citizen of this state in December following, unless the contrary had been proved. Rule made absolute.

<sup>1</sup> [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]

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