

Case No. 2,416.

CARNE ET AL. V. MCLANE.

[1 Cranch, C. C. 351.]¹

Circuit Court, District of Columbia.

Nov. Term, 1806.

INTEREST OF WITNESS—ACTION BY PARTNERS—NONJOINER—EXAMINATION
ON VOIR DIRE—EVIDENCE.

1. The court will not compel a witness to testify against his interest in a cause in which he is interested.
2. If all the members of a partnership are not named as plaintiffs, the defendant may avail himself of the objection upon non assumpsit.
3. What a witness says on voir dire is not evidence to the jury.

At law. Assumpsit upon a promissory note indorsed by the defendant [Archibald McLane] to the plaintiffs [Carne and Slade]. Mr. Libby objected to being sworn for the defendants, because interested as a partner with the plaintiffs; and swore upon voir dire that he was interested as a partner. The court refused to compel him to swear contrary to his interest.

The defendant's counsel then objected that the plaintiffs could not recover, because Mr. Libby, being a partner of the firm of Carne & Slade, ought to have been named.

The plaintiffs' counsel, said that the declaration of Libby upon voir dire is not evidence to the jury, and the court so decided. The defendant then offered evidence to prove that Libby was a partner, and prayed the court to instruct the jury that, if they should be satisfied, by legal evidence, that he was a partner in the house of Carne & Slade, at

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the time of the indorsement of the note, the plaintiffs could not recover; which instruction the court gave as prayed.

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