CLARKE ET AL. V. THRELKELD.

Case No. 2,865.

{2 Cranch, C. C. 408.}[1]

Circuit Court, District of Columbia. April Term, 1823.

REHEARING IN EQUITY.

A cause in equity in this court may be reheard if the petition for rehearing be filed before the end of the next term after the final decree, and if no appeal lies to the supreme court in that cause.

{Cited in Glenn v. Dimmock, 43 Fed. 551.}

This was a bill filed against Threlkeld and others, to obtain conveyance of a lot in Georgetown, to the complainants, in consequence of the deed, formerly made by Threlkeld to the ancestor of the complainants, of the same lot, having been lost before it was recorded. Threlkeld had no interest in the cause, and did not oppose the prayer of the bill. At June term, 1882, the court decreed that he should convey the lot to the complainants, and pay the costs. At the next term (October term, 1822) Taney, for the defendant, contended that the decree ought not to have been for costs. Key, contra, waived the formality of a petition for rehearing, and now, at this term (April term, 1823), consented that the court should consider the case as if the petition had been filed at October term, 1822. By the 31st rule of the equity practice of the courts of the United States, as prescribed by the supreme court it is declared, that if no appeal lies to the supreme court, a rehearing may be granted, at the discretion of the court, at any time before the end of the next term after the final decree shall have been entered and recorded. The value of the lot decreed to be conveyed does not appear in the papers in the cause, but was supposed to be of less value than $1,000, so that it was a cause in which there could be no appeal to the supreme court.

THE COURT, under these circumstances, was of opinion (MORSELL, Circuit Judge, contra), that they had now a right to rehear the cause; and upon the rehearing, they ordered so much of the decree to be rescinded as regarded costs.

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