DE BUTTS v. BACON ET AL.

Case No. 3,717.

{1 Cranch, C. C. 569.}[1]

Circuit Court, District of Columbia. July Term, 1809.

CHANCERY HEARINGS—VIVA VOCE TESTIMONY.

At the hearing of a cause in chancery, the court will not receive vivâ voce testimony unless to prove an exhibit.

Mr. Swann, for plaintiff, offered, at the hearing, to prove certain papers not made exhibits, and cited the 30th section of the judiciary act of 1789 (1 Stat. 88).

The cause was set for hearing upon the bill, answer, replication, exhibits, and depositions.

C. Lee stated it to be the practice in the federal courts to examine witnesses at the hearing, and to have the evidence taken down in writing by the clerk.

Mr. Youngs, contrà. Where the evidence has been taken in the usual mode by commission, and the cause set for hearing, no evidence taken afterwards can be received unless by consent or the special order of court. Law. Va. Nov. 29, 1792, p. 67, § 46; 1 Har. Ch. Pr. 595.

THE COURT refused to suffer viva voce testimony to prove a letter, produced by the plaintiff at the hearing, not being an exhibit referred to by the bill or answer.

THE COURT had some doubt upon the 30th section of the judiciary act of 1789, but as the practice both here and in Maryland has been not to receive the testimony at the hearing, and having so decided in the case of Harper v. Marine Ins. Co. {Case No. 6,088}, at the last term, in a full court, they rejected the testimony. See the 12th rule of practice in this court.

{NOTE. On final hearing there was a decree for defendants, which decree was affirmed by the supreme court on appeal. De Butts v. Bacon, 6 Cranch (10 U. s.) 252.}

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