

Case No. 4,155.

DUNHAM v. RILEY.

[4 Wash. C. C. 126.]¹

Circuit Court, D. Pennsylvania.

April Term, 1821.

NONSUIT—FAILURE TO PRODUCE PAPERS—PRACTICE.

To entitle the defendant to nonsuit the plaintiff for not producing papers which he was noticed to produce, the defendant must first obtain an order of the court under a rule that they should be produced. But this order need not be absolute when moved for, but may be nisi cause shall be shown at the trial.

[Cited in *Russell v. McLellan*, Case No. 12,158; *Gregory v. Chicago, M. & St. P. R.*, 10 Fed. 529.]

Rule upon the plaintiff to show cause why he should not produce certain books, papers, and accounts at the trial of this cause.

Mr. Binney, for plaintiff.

Chauncey & Peters, for defendant.

WASHINGTON, Circuit Justice. It was stated in the case of *Bas v. Steele* [Case No. 1,088], decided in this court, that to entitle the defendant to nonsuit the plaintiff at the trial, upon the ground of a non-production of papers, he must first obtain an order of the court, under a regular notice, that the papers should be produced. But the court did not decide whether such order must be absolute in the first instance. We think it need not be so; but that upon the rule to show cause, it may be made nisi; leaving the court at liberty to enforce the rule, unless the plaintiff can show, at the trial, good cause for not producing them. If the rule be made absolute at the time when it is argued, the court might have to go prematurely into an inquiry into the case, in order to decide whether the order should be absolute or not. If the case should be simple, and such inquiry should not appear to be necessary, the court may at once discharge, or make the rule absolute. Rule made absolute nisi.

¹ [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.]