

Case No. 4,168. DUNLOP ET UX. V. PETER ET AL.
[1 Cranch, C. C. 403.]¹

Circuit Court, District of Columbia.

June Term, 1807.

TRIAL—ORDER OF ARGUMENTS.

The party upon whom the burden of proof, is thrown by the issue is to open and close the argument.
[Cited in Carrico v. Kirby, Case No. 2,442.]

Issue upon the orphans' court to ascertain the sanity of a testator. It was made a question who was to open and close the argument.

Mr. Mason and F. S. Key, for defendants.

The plea is that the testator was of sound mind, and of this they put themselves on the country; the affirmative of the issue is with the defendants.

P. B. Key and Mr. Jones, contra.

He who has the burden of proof is to open and close. Every man is presumed to be sane, until the contrary is proved. The plaintiffs were the original libellants, and the general rule is that the plaintiff is to open and close unless special circumstances make the other rule necessary. The affirmative of the issue is with us, not the mere form of words, but the substance; we have the burden of proof.

PER CURIAM. The substance of the affirmative of the issue is with the plaintiffs, the original libellants. They are the party who wish to alter the existing state of things. The defendants can offer no evidence until the sanity of the testator is impeached. The defendants have nothing to do. The plaintiff is the mover, the actor, and on him the

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burden of proof lies. It is his business therefore to open and close the argument.
DUCKETT, Circuit Judge, absent.

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