

Case No. 5,366.

GERNON v. BOCCALINE.

{2 Wash. C. C. 199.}¹

Circuit Court, D. Pennsylvania.

April Term, 1808.

PLEADING IN EQUITY—REPLICATION DENYING ALLEGATIONS IN
PLEA—ANSWER—PLEA IN AVOIDANCE.

1. Where the replication denies all the allegations in the plea, the plea must be supported by evidence.
2. If an answer to any particular charge in the bill deny the same, it must be opposed by the plaintiff, by two witnesses, or by one and circumstances.
3. A plea in avoidance of, and not responsive to the bill, stands for nothing as evidence of the facts stated in it.

{Cited in *Tilghman v. Tilghman*, Case No. 14,045.}

In equity. Plea to the jurisdiction of the court, (sworn to,) that the plaintiff was, at the time of filing his bill, a citizen of the state of Pennsylvania. To the plea, a general replication was filed. The deposition of one witness was read, who proved that the plaintiff, in the summer of 1807, removed into the state of New-Jersey, with his family, sold part of his furniture after his leaving this state, and removed the rest to his place of residence at Burlington.

M. Levy, for defendant, observed, that the plea, being sworn to, could not be overruled by the deposition of one witness.

WASHINGTON, Circuit Justice. The replication having denied all the matter of the plea, the latter must be supported by evidence. If an answer, responsive to any charge in the bill, deny the same, it must be opposed on the part of the complainant, (who makes this part of the answer evidence, by calling upon the defendant to give evidence against himself,) by two witnesses, or by one witness, with the addition of circumstances. But a plea is always in avoidance of the bill, and never responsive to it. It of course stands for nothing, as evidence of the facts stated in it. Plea overruled.

{See Case No. 5,367.}

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.}