

Case No. 6,472.

HIGGS ET UX. V. HEUGH.

[3 Cranch, C. C. 142.]<sup>1</sup>

Circuit Court, District of Columbia.

May Term, 1827.

TRIAL—CONTINUANCE—ABSENCE OF WITNESS.

In an affidavit for continuance of a cause on account of the absence of a witness, it is not necessary to state the particular circumstances of diligence used by the party to obtain the testimony of such witness. They may be proved ore tenus.

Mr. Jones, for plaintiffs, moved for a continuance of the cause, on affidavit of the plaintiff, Higgs, which stated, "that a witness in behalf of the plaintiffs in said suit, to wit, Turbett R. Belton, whose testimony is material, competent, and proper in the said suit, is really wanting from West Florida, and that the plaintiffs have used their proper and reasonable endeavors, to procure the testimony of the said witness, and this deponent verily believes that the said cause cannot be tried with justice to the plaintiffs, without such testimony, and he has a reasonable expectation and belief, that the testimony of the said witness can be procured at the next regular session of this court." The affidavit then stated the particular facts which it was expected the witness would prove.

Mr. Key for defendant, objected that it did not appear, by the affidavit, what particular endeavors the plaintiffs had made to obtain the testimony of the witness.

THE COURT (nem. con.) said, that the practice of the court has not been to require the particular circumstances of diligence to be stated in the affidavit, but to examine the party, or his counsel either upon oath or otherwise to the satisfaction of the court as to the particular endeavors to obtain the testimony; and, in the present case, being satisfied by Mr. Jones's verbal statement, that reasonable diligence had been used, they continued the cause.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]