

Case No. 6,519.

HINES ET AL. V. DEAN ET AL.

[4 Wash. C. C. 159.]<sup>1</sup>

Circuit Court, E. D. Pennsylvania.

Oct. Term, 1821.

PRACTICE—SERVICE OF PROCESS—JUDGMENT FOR WANT OF APPEARANCE.

When the summons is served ten days before the return day, the plaintiff, on filing his declaration, is entitled to enter up judgment by nil dicit, for want of appearance. But this must be done at rules.

[Cited in *Wallace v. Clark*, Case No. 17,098.]

The summons, in this case, having been returned executed to the last term, and no appearance entered, the plaintiff moved for judgment by default, under the act of assembly of this state of the 20th of March, 1724 (1 Smith's Laws, 165) referred to in the case of *Smith v. Bohn* [Case No. 13,015].

PER CURIAM. We should in this case follow the practice of the state courts under the above law, by granting the motion, if it did not contradict a written rule of this court, which directs pleadings, rules and judgments, for want of appearance or filing pleas, to be transacted at rules, to be held monthly in the clerk's office. In this case, the summons having been served, the plaintiff should have ruled the defendant to appear and plead, and if he had failed to do so, he might have entered up judgment, by default, nisi; which this court would, upon motion, make absolute or set aside, upon the defendant's entering his appearance and pleading to issue. The courts of this state having so construed the above law, as to give judgment, although the declaration was not filed before the return day, this court would also dispense with it, if it be filed before the rule to appear and plead is entered. The motion is, therefore, overruled.

<sup>1</sup> [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.]