

Case No. 6,733.

HOURQUIBEE v. GERARD.

[2 Wash. C. C. 164.]¹

Circuit Court, D. Pennsylvania.

April Term, 1808.

CONTINUANCE—NEW TESTIMONY.

The court continued the cause, upon the application of the defendant, he being an administrator, and having a few days before discovered among the intestate's papers, material testimony.

[This was an action of assumpsit by Hourquibee & Bros. against Stephen Gerard, administrator of John Gerard, deceased, to recover 26,961 francs due on account stated between plaintiffs and defendant's intestate at Bordeaux, for one-half of the proceeds of 100 casks of wine shipped on board J. G.'s vessel, and sold by him, and for money advanced for board and education of J. G.'s children.]

Motion by defendant, to continue the cause: First, because it appears, by a commission returned in the cause, that the plaintiff had dispensed with an answer being made to one of his own interrogatories, which the defendendant alleged was very material to his defence. The cases of *Ketland v. Bissett* [Case No. 7,742] and *Winthrop v. Union Ins. Co.* [Id. 17,901] were cited to prove, that if all the interrogatories are not answered, it is fatal to the whole commission. In answer to this it was said, that the defendant should not rely on the plaintiff's depositions, and therefore the objection could not bear upon the motion to continue. But further, that this commission had been returned for twelve months, and that the cause had been continued at the last term, on the motion of the defendant, for another reason, but this was not mentioned. The second ground for a continuance was, that the defendant had, within a few days past, looked at a letter of his testator, in his possession, by which it appeared, that the sentence of a foreign court of admiralty would be important and essential to his defence.

THE COURT agreed to the continuance, for the second ground assigned, particularly, considering the defendant as an administrator.

[The case was subsequently heard on the evidence and on the charge to the jury by the court, with a verdict for plaintiff. Case No. 6,732.]

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.]