JONES v. GREENOLDS.

Case No. 7,464.

{1 Cranch, C. C. 339.}[3]

Circuit Court, District of Columbia. July Term, 1806.

WITNESS—ATTENDANCE—DEPOSITION DE BENE ESSE.

The return of non est upon a subpoena issued only a few days before the sitting of the court, is not a sufficient evidence that the witness is "unable" to attend, so as to enable the party to read his deposition taken de bene esse, under the act of Virginia.

Assault and battery.

Mr. Youngs, for plaintiff, contended, that he had a right to read the deposition of Beck-with Green, taken de bene esse, upon showing that a subpoena had been issued to the marshal of the District of Columbia, and returned non est. It was issued only a few days before the sitting of the court. He cited the case of Broadwell v. McClish {Case No. 1,911}, at April term, 1801.

But THE COURT said, that under the act of assembly (Parl. Papers, 279, § 12), the party who would use such a deposition, must show that the witness is unable to attend, and that the return of the subpoena is not satisfactory evidence to the court of that fact. The fact was then proved by affidavit, and the deposition was read.

[3] {Reported by Hon. William Cranch, Chief Judge.}