Case No. 10,448.

OFFUTT v. BEATTY.

[1 Cranch, C. C. 213.][1]

Circuit Court, District of Columbia. Dec. Term, 1804.

OYER AT SUBSEQUENT TERM—DEMURRER—AMENDMENT.

1. After oyer prayed and demurrer by the defendant, the plaintiff is not bound to give oyer at a subsequent term. The defendant should have spread the oyer upon the record.
2. The court will not give leave to amend a demurrer, unless it goes to the merits of the case.

The defendant prayed oyer of the letters testamentary, and demurred thereon to the writ and declaration, especially, because the letters testamentary were not granted in the District of Columbia.

Mr. Morsell, for defendant, had not set forth the letters, but merely stated that oyer was granted in the words following, &c, and then demurred, without having, in fact, had oyer, so that the letters testamentary did not appear, for the plaintiff is not obliged to produce the letters after the term at which they are offered.

Demurrer overruled, and no leave given to pray oyer anew, it not being a demurrer on the merits.

[1] [Reported by Hon. William Cranch, Chief Judge.]

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