Case No. 10,944.

PENNS v. INGRAHAM.

{2 Wash. C. C. 487.}[1]

Circuit Court, D. Pennsylvania. Jan., 1811.

EVIDENCE—DEPOSITION—WITNESS.

Depositions taken de bene esse, cannot be read in evidence, unless the party who offers them, shows that the witnesses were subpoenaed, and cannot attend.

{Cited in Whitford v. Clark Co., 119 U. S. 525, 7 Sup. Ct. 308.}

In this case, the defendant offered in evidence, depositions taken before a judge of the common pleas, which were objected to, because taken de bene esse; and it does not appear that the witnesses were subpoenaed, and could not attend. The plaintiff not having traced a title to the lessors of the plaintiff, the court directed a nonsuit; but the parties agreed to withdraw a juror, and to continue.

Tilghman & Wallace, for plaintiff.

Mr. Lewis, for defendant.

BY THE COURT. The objection is well taken, and the deposition cannot be read.

[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.}

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