

READ v. CONSEQUA.

[4 Wash. O. C. 335.]¹

Circuit Court, D. Pennsylvania. Oct. Term, 1822.

PLEADING IN EQUITY—ANSWER TAKEN IN
FOREIGN COUNTRY—HOW SWORN
TO—EXCEPTIONS.

1. An answer in chancery by a defendant beyond sea, must be taken and sworn to by a commission under a dedimus issued by this court, directing him to administer the oath in the most solemn forms observed by the laws and usages of that country.
2. An answer from China being objected to as not responsive to all the charges on the bill, the court directed the plaintiff to file his exceptions in ten days, and that if the new answer was clear of those exceptions, no new exceptions to it would be listened to.

This case came on upon cross motions to take the bill for confessed for want of an answer, and to dissolve the injunction. The defendant grounded his motion upon an answer sworn to by the defendant at Canton, in April last. It was objected to as an answer properly verified by oath, the only evidence of that fact being the certificate of three persons, witnesses to the signature of the defendant, who swore that they saw the defendant sign the same, and that he swore to the answer according to the laws of China.

WASHINGTON, Circuit Justice. This is not sufficient. According to the practice of the English courts of chancery, which, by a rule of this court, prior to the rules lately established ³⁵⁴ by the supreme court, was to govern in cases not otherwise provided for by special rules, the answer ought to have been taken and sworn to under a dedimus potestatem. Another objection is, that there is no certificate what the oath taken by the defendant was, but it is merely said that he swore to the answer. Under the

circumstances of the case, I shall overrule both motions; and order that a dedimus issue to a commissioner at Canton, in conformity with the ninth rule of the court, as now existing, directing the oath to be administered in the most solemn form observed by the laws and usages of China. And as the plaintiff has intimated that he considers this answer open to exceptions, I shall to prevent further delay, order the plaintiff to file his exceptions in ten days; and if the same answer, but clear of such exceptions, should be returned, no future exceptions shall be received.

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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