

RHODES v. RIGG.

[1 Cranch, C. C. 87.]¹

Circuit Court, District of Columbia. April Term, 1802.

EVIDENCE—SUBSCRIBING WITNESS—AFFIDAVIT.

An instrument can be proved by the subscribing witness only, unless, &c.

Debt on bond, payment, non-payment, and issue.

The defendant [John Rigg] offered an account in set-off. The plaintiff [William Rhodes] produced the defendant's receipt, to which George Rhodes was a subscribing witness. The defendant objected to its being admitted in evidence unless proved by the subscribing witness, George Rhodes. The plaintiff made affidavit that the witness had removed from Alexandria about two years ago, and has not returned since; that he does not know where he now is, but has understood that he has been at work on the shore of the Chesapeake Bay; but on what part he knows not, nor does he know that he is within one hundred miles of this place.

THE COURT were of opinion that this affidavit was not sufficient to justify the admission of other evidence of the handwriting of the defendant, nor to dispense with the testimony of the subscribing witness." The plaintiff suffered a nonsuit, but the court reinstated the cause on payment of costs.

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