

SMITH v. CAROLIN.

{1 Cranch, C. C. 99.}¹

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

NOTES—SUBSCRIBING WITNESS—OBLIGATION TO PRODUCE.

If there be a subscribing witness to an instrument, evidence of the confession of the defendant will not dispense with the testimony of the subscribing witness.

Debt on a promissory note.

Mr. Jones, for plaintiff, produced a note having a subscribing witness who was not present in court, and offered to prove that the defendant acknowledged the note to be his.

Mr. Youngs, for defendant, objected, and cited Esp. N. P. 256, 781.

THE COURT refused to admit the testimony, on the general ground that the non-production of the subscribing witness induces a suspicion that if produced, he would testify something to the defendant's advantage. Peake, Ev. 7, 64-66.

KILTY, Chief Judge, contra.

The plaintiff became nonsuit.

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

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