

**Case No. 16,949.** VINING v. WOOTEN.

{Brunner, Col. Cas. 187;<sup>1</sup> Cooke, 127.}

Circuit Court, D. Tennessee.

1812.

WITNESS—INCOMPETENCY FROM INTEREST—HOW PROVED.

Interest of a witness for the purpose of proving his incompetency to testify cannot be shown by hearsay evidence or declarations out of court.

The plaintiff produced as a witness one William Chism. The counsel for the defendant objected that he was incompetent, and produced a witness who proved that he had heard Chism say if the plaintiffs gained the land he would get six hundred and forty acres of it.

It was objected by Dickinson, Haywood, and Cooke, for the plaintiffs, that the interest could not be established from anything he had been heard to say on the subject.

Mr. Whiteside, for defendants.

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Before TODD, Circuit Justice, and McNAIRY, District Judge.

TODD, Circuit Justice. His interest cannot be proved in this way. It would be nothing more than hearsay evidence, which shall not affect the plaintiff. You may prove him incompetent from acts, or from facts that are capable of being seen and judged of; but you cannot show his interest by anything he has said. It might be that he would say a thing of that kind barely to prevent a party from having the benefit of his testimony.

McNAIRY, District Judge, said he was not perfectly satisfied with the opinion of his Brother TODD. The objection to the introduction of the witness upon a division of the court would fail; it was, therefore, unnecessary for him to give any opinion upon the subject, but he said it would seem strange, at first view, that if a witness should say that he was to have five hundred dollars of the income to be recovered by the plaintiff, this should not render him incompetent. The acts and facts spoken of may exist only in the knowledge of the witnesses and the party.

Declarations of a witness as to his interest are not admissible to prove his incompetency to testify. See *Erickson v. Bell*, 53 Iowa, 631, 6 N. W. 19, citing case in text.

<sup>1</sup> [Reported by Albert Brunner, Esq., and here reprinted by permission.]