

Case No. 17,622.

WIGFIELD v. DYER.

{1 Cranch, C. C. 403.}¹

Circuit Court, District of Columbia.

June Term, 1807.

AMENDMENT OF PLEADING.

When leave is given to amend on payment of costs, the payment is not a condition precedent, unless so specially expressed in the order.

There had been a plea in abatement, upon which the plaintiff had leave to amend on payment of costs. The amendment was immediately made at the last term, no costs being paid; and a rule laid on the defendant to plead, which rule had not been complied with.

Mr. Morsell, for plaintiff, moved for judgment on the rule to plead.

F. S. Key, for defendant, objected that the plaintiff had not paid the costs and therefore ought not to have the benefit of the amendment and his rule. And the court at first inclined to that opinion, considering the payment of the costs as a condition precedent. But on reflection and inquiring of the bar as to the practice, and on examining the court's notes of cases, and finding no case in which the question had been before made,—

THE COURT said that they understood the general practice to be not to insist on the payment of costs in such cases as a condition precedent. However, there might be cases in which the court, in their discretion, would direct the costs to be first paid.

WIGG, Ex parte. See Case No. 2,348.

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