

Case No. 17,786.

WILSON v. BARNUM.

{1 Wall, Jr., 342.}<sup>1</sup>

Circuit Court, E. D. Pennsylvania.

July 5, 1849.

FEIGNED ISSUE—PRACTICE.

Where a feigned issue for trial of a fact is directed by the court, no declaration of any sort is requisite. The case is put on the trial list and the jury sworn to try the issue, in the words of the order of issue itself.

The court having directed from its equity side, an issue of fact for trial by a jury, Mr. St. G. T. Campbell and Mr. S. V. Smith for the plaintiff, filed a formal declaration, in the old fashioned way, setting forth a fictitious conversation that had been moved between the parties, a consequent dispute, wager, &c.

Mr. Hirst and Mr. W. W. Hubbell made an objection to the declaration as not embodying, in a full and issuable way, the matter directed to be tried. After some argument on both sides, as to whether the declaration did do this or not, the discussion was cut short by the opinion of the court thus given.

GRIER, Circuit Justice. The old fashioned and cumbrous machinery by which these issues of fact have been hitherto managed is entirely useless; and the matter to be tried is only involved by it in a mass of words signifying nothing. Now, especially, since wagers of all sorts, have been discountenanced as illegal by the supreme court of Pennsylvania (*Edgell v. M'Laughlin*, 6 Whart. 176), there is no propriety in the old form; and it may as well be swept away at once, as the relick of a barbarous age. In the present issue, and in all future ones in this court, the matter can be put on the trial list at once, and the jury be sworn to try in the form and in the words set forth in the order of issue. There is no necessity of a declaration or pleading of any sort.

<sup>1</sup> [Reported by John William Wallace, Esq.].