

NEW YORK & BALTIMORE COFFEE
POLISHING CO. v. NEW YORK COFFEE
POLISHING CO.

Circuit Court, E. D. New York.

1882.

CONTEMPT OF WITNESS—COMMISSION TO TAKE
TESTIMONY.

An order to show cause why a witness should not be held in contempt, asked for to lay a foundation for a motion to issue a commission to take the testimony, refused on the ground that the order to attach would be useless, and on subsequent motion an order was made to issue the commission.

In Equity. Order for commission to take testimony.

Richards & Heald and *Henry R. Starbuck*, for complainant.

Goodrich, Deedy & Platt, for defendant.

Appeal from taxation of costs under the decision in the above cause, made December 27, 1881, (9 FED. REP. 578,) having been taken, that decision was so far modified as to allow no costs to the plaintiff on the demurrer. The defendant having failed to answer within the ten days given, plaintiff's solicitor applied for an order to be served on the president of the company defendant to show cause why he should not be punished as for a contempt in not so answering, and cited *Coveny v. Athill*, Dick. 355, and *Lancaster v. Lancaster*, 6 Sim. 439, stating also in open court that the sole reason for applying for the order was to lay a foundation for a motion to issue the commission to take testimony which was prayed for in the bill. Upon this the order to show cause was refused on the ground that the order to attach the defendant would be useless, because it would not tend to establish the truth of the allegations in the bill of the complaint. Thereafter solicitor for complainant applied on notice for a commission to issue, and defendant opposed on

the ground that issue had not been joined in the cause. The objection was overruled, and an order made for a commission to take the testimony of the witness named in the bill, *in perpetuam rei memoriam*, upon written interrogatories to be attached to the commission.

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