

DONAHUE AND OTHERS V. ROBERTS AND  
OTHERS.<sup>1</sup>

*Circuit Court, E. D. Missouri.* March 21, 1884.

1. DEPOSITIONS—CERTIFICATE.

Where depositions are taken *de bene esse*, under section 865, Rev. St., before a notary, his certificate should state, among other things, (1) that he is not a party in interest; (2) that the depositions were reduced to writing in the deponent's presence; and (3) in what court it is to be used.

2. SAME—AMENDMENTS.

Where a notary's certificate fails to comply with the requirements of law, leave may be given to amend it.

In Equity. Motion to suppress depositions.

The grounds of the motion sufficiently appear from the opinion of the court.

*Walker & Walker*, for complainants.

*Lucien Eaton*, for defendants.

TREAT, J., (*orally*.) The motion to suppress will be sustained for a number of reasons: *First*, the depositions are certified as taken in the wrong court; *second*, it is not stated that the notary taking them was not a party in interest; *third*, it is not stated that they were reduced to writing in the presence of the deponent,—all of which propositions have obtained ever since 1789. The motion to suppress will be sustained. These matters being, as held by the supreme court over and over again, in derogation of the common law, the party must conform to the requirements of the statute, otherwise the depositions will not be received.

Leave is given to withdraw the depositions in order that the notary's certificate may be amended.

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.

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