

Cook Vs. Woodrow

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Court : US Supreme Court

Decided On : 1809

Appeal No. : 9 U.S. 13

Appellant : Cook

Respondent : Woodrow

Judgement :

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ERROR TO THE CIRCUIT COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

In an action of trover, if the judgment below be in favor of the original defendant, the value of the matter in dispute upon the writ of error in the Supreme Court of the United States is the sum claimed as damages in the declaration.

Due diligence must be used to obtain the testimony of the subscribing witness.

If inquiry be made at the place where the witness was last heard of and he cannot be found, evidence of his handwriting may be admitted.

Error to the Circuit Court of the District of Columbia in an action of trover brought by the plaintiffs in error for sundry household goods.

A bill of exceptions stated that the plaintiffs on the trial produced in evidence to support their title to the goods, a certain paper writing signed by one John Withers, to which one John Pierson had subscribed his name as a witness, and offered parol evidence to prove that the subscribing witness

"had upwards of a year ago left the District of Columbia, and that before he left the said district, he declared that he should go to the northward -- that is to say, to Philadelphia or New York, and said he had a wife in New York. That the said subscribing witness went from the said district to Norfolk, and that when he got there, he declared that he should go on further to the south, but where was not known, and that he has not been heard of by the witness for the last twelve months. It appeared that subpoena had been issued in this case, for the said subscribing witness, directed to the Marshal of the District of Columbia, but he could not be found in the said district by the said marshal. The plaintiff then offered to prove the handwriting of the subscribing witness and of the said John Withers to the said writing, but the court refused to permit the plaintiffs to produce evidence of the handwriting of the said subscribing witness, and refused to permit the plaintiffs to prove the handwriting of the said John Withers otherwise than by the testimony of the said

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subscribing witness; to which refusal the plaintiffs excepted."

MR. CHIEF JUSTICE MARSHALL, after stating the case as it appeared in the bill of exceptions, observed that the Court had some difficulty upon the point. The general rule of evidence is that the best evidence must be produced which the

nature of the case admits and which is in the power of the party. In consequence of that rule, the testimony of the subscribing witness must be had if possible. But if it appear that the testimony of the subscribing witness cannot be had, the next best evidence is proof of his handwriting. In the present case it does not appear to the court that the testimony of the subscribing witness could not have been obtained if proper diligence had been used for that purpose. It does not appear that the witness had ever left Norfolk. It is not stated that any inquiry concerning him had been made there. If such inquiry had been made and he could not be found, evidence of his handwriting might have been permitted. But

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as the case appears in the bill of exceptions, the court below has not erred.

Judgment affirmed with costs.

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