

Beale Vs. Thompson and Maris

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Court : US Supreme Court

Decided On : 1814

Appeal No. : 12 U.S. 70

Appellant : Beale

Respondent : Thompson and Maris

Judgement :

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Beale v. Thompson & Maris

12 U.S. (8 Cranch) 70

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Decided that it is a fatal objection to a deposition taken under the Judiciary Act of 1789, sec. 30, that it was opened out of court.

On the trial in the circuit court below, the defendant Beale offered in evidence the deposition of Tunis Craven, taken before the judge of the District Court of the United States for the District of New Hampshire under the 30th sec. of the Judiciary Act of Sep. 24, 1789, vol. 1, p. 68, which, after prescribing the mode of taking

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depositions, directs that

"The depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken or shall, together with a certificate of the reasons aforesaid of their being taken and of the notice, if any, given to the adverse party, be by him, the said magistrate, sealed up and directed to such court and remain under his seal until opened in court."

The deposition was sealed up by the judge, but directed to the clerk of the court, and he, supposing it to be a letter respecting his official business, opened it out of court.

The court below rejected the deposition, which being stated in a bill of exceptions, the defendant, Beale, brought his writ of error.

The question respecting the informality of opening the deposition out of court was not argued in this Court, there being another objection to it which the counsel deemed more important, *viz.*, that the deponent was the drawer of the note upon which the suit was brought against the defendant Beale as endorser, the purport of the deposition being to show that Beale had not due notice of the nonpayment of the note by the deponent.

STORY, J. delivered the opinion of the Court as follows:

The single point in this case is whether the Circuit Court of the District of Columbia erred in rejecting the deposition of Tunis Craven.

Independent of all other grounds, the court is of opinion that the fact of the depositions' not having been opened in court is a fatal objection.

The statute of 24 September, 1789, ch. 20, sec. 30, is express on this head.

The judgment of the circuit court must be

Affirmed.

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