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## **Georgetown Trust** Co. v. Marvel

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**Decision Date:** 27 July 1932

**Citation:** Georgetown Trust Co. v. Marvel, 162 A. 359, 35 Del. 210 (Del. Super. 1932) 

**Court:** Delaware Superior Court

**Parties:** GEORGETOWN TRUST COMPANY, a corporation of the State of Delaware, v. MARVEL, Executrix

**162 A. 359**

**35 Del. 210**

**GEORGETOWN TRUST** COMPANY, a corporation of the State of Delaware,  
v. MARVEL, Executrix

**Superior Court of Delaware, Sussex County**

**July 27, 1932**

Superior Court for Sussex County, Action of Assumpsit on two promissory notes, No. 44, June Term, 1932.

There was no appearance for the defendant and no affidavit of demand filed and the plaintiff's attorney having filed his declaration, <sup>[1]</sup> therefore, moved for judgment nisi, for want of appearance. This motion was granted. Stating that he desired to make his judgment bind the real estate of the deceased (Revised Code 1915, §§ 3400, 4316). The plaintiff's attorney also moved:

1. That for the purpose of ascertaining the amount due on such judgment the case be referred to three judicious and impartial freeholders of the county to be named by the Court.
2. That it be provided in the order naming such referees that their award be returned to this court at some later day, to be fixed by the Court, but during that term.

The motion of the plaintiff is granted.

James M. Tunnell for plaintiff.

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HARRINGTON and RICHARDS, J. J., sitting.

## **OPINION**

\*211 HARRINGTON, J.

Del. 211

Though a judgment *nisi* for want of appearance has already been entered against the defendant, that a judgment on an award of three judicious and impartial freeholders ascertaining the amount due on such judgment is proper, and will bind the real estate of a deceased person where an executor or administrator is the defendant in an action, is clear. *Revised Code 1915, §§ 3400, 3401, 4316, 4319; Woolley's Del. Pr., § 706.*

Differing from the usual rule it is equally clear that the application for the appointment of referees may be made by the plaintiff alone, where the defendant has failed to appear. *Revised Code 1915, §§ 4316, 4317; Woolley's Del. Pr., § 702.*

In the absence of some other direction in the order appointing them the report of referees is always returnable to the court on or before the first day of the term succeeding their appointment; and in the absence of exception filed thereto judgment on such report would be entered as a matter of course, at that term. *Woolley's Del. Pr.*, §§ 712, 717.

In conformity with its usual powers over its own proceedings the court, however, for sufficient cause shown may extend the return day to a later date. In fact, it has been said that in practice, when good reason is shown, the court will not only extend the return day to a later day \*212 during the usual return term but even to the first Del. 212 day of the succeeding term. *Woolley's Del. Pr.*, §§ 712, 717.

Exceptions to the reports of referees must always be filed during the term to which they are returned and before the confirmation of such reports. *Woolley's Del. Pr.*, § 717; *Conoway v. Short*, 3 *Harr.* 342.

While no rule to that effect appears in the Superior Court Rules, long established practice requires that exceptions shall ordinarily be filed on the first Thursday of the \*360 return term, but, for cause shown, this time may be extended by the Court. A. 360 *Woolley's Del. Pr.*, § 717.

In most cases of this character, the amount due is ascertained by inquisition, but under the statute (*Revised Code* 1915, § 4316) it may also be done by referring the case to three judicious and impartial freeholders; and, in a proper case, there would seem to be no good reason why they should not be directed to return their report to this court at some later date during the term, instead of to the succeeding term. In fact, this is sometimes done by agreement of counsel and a date is then fixed by the court for filing exceptions thereto. *Woolley's Del. Pr.*, § 712.

The motion of the plaintiff is, therefore, granted and the freeholders appointed will be directed to return their report to this court on or before Wednesday, July 27, 1932, and on that day the time for filing exceptions to such report will be fixed by the Court.

1. Rule 50, Supreme Court Rules; *Woolley's Del. Pr.*, § 236, etc.