

THE ARGO.

Case No. 517.

{2 Gall. 314.}¹

Circuit Court, D. Massachusetts.

Oct. Term, 1814.²

DEPOSITION—NOTICE—ATTORNEY OF RECORD.

1. When there is an attorney of record, it is improper to take depositions without notice to him, or to the party.
2. When depositions are taken to be used against the United States, if there be an attorney of the United States within one hundred miles of the place of caption, he must be notified.

{See note at end of case.}

This was an information for a violation of the non-intercourse law.

G. Blake, Dist. Atty., offered in evidence depositions, which had been taken in New York without notice, since there had been an attorney of record for the claimant.

{Before STORY, Circuit Justice, and SHERBURNE, District Judge.}

PER CURIAM. Though depositions thus taken have been usually received, there are certainly great objections to the practice; and the court have heretofore intimated a resolution to require notice to be given in all cases, where there is an attorney of record. To prove that the vessel had not been at Guadaloupe, as alleged in the information, the claimant produced the depositions of several of the crew, which appeared to have been taken in Boston, and elsewhere with-in one hundred miles of the residence of a district attorney, without notice to him. Upon objection by the district attorney, they were rejected for this cause, and the court observed, that in all cases, where there is an attorney of the United States residing within one hundred miles of the place of caption, notice must be given to him of the taking of depositions, to be used in any cause, in which the United States are a party.

{NOTE. The judiciary act of 1789, § 30, (1 Stat. 89,) required notice from the magistrate before whom the deposition is to be taken, to the adverse party or his attorney, “if either is within one hundred miles of the place of caption.” See *Dick v. Runnels*, 5 How. (46 U. S.) 8. This provision was modified by the act of 1872, c. 146, (17 Stat. 89,) which requires “reasonable notice” in writing to the adverse party or his attorney. See Rev. St. § 863.}

¹ {Reported by John Gallison, Esq.}

² {Affirmed by supreme court in *The Argo*, 2 Wheat. (15 U. S.) 287.}