

Case No. 542.

ARMSTRONG v. BROWN.

{1 Wash. C. C. 43.}<sup>1</sup>

Circuit Court, D. Pennsylvania.

April Term, 1803.

DEPOSITIONS—COMMISSIONERS NOT ACTING—SETOFF—UNLIQUIDATED DAMAGES.

1. A commission directed to five commissioners, to be executed by them, must be executed by the whole five persons; although the commissioners nominated by the party objecting to the execution, were present, but did not act.
2. The drawer of a bill of exchange, protested after acceptance, having paid the damages, cannot set off the same, in an action against him by the acceptor, on another account, although the acceptor had funds in his hands to pay the bill, the damages being unliquidated.

{See *De Taslet v. Crousellat*, Case No. 3,827; *Id.* 3,828.}

Ruled in this case, that if a commission for taking depositions be directed to five commissioners, of whom three are named by the plaintiff and two by the defendant, and is executed by three only, or by any number less than the whole; the deposition is not well taken, and cannot be read; although the two commissioners named by the defendant, by whom the objection is made, were present. Their authority is special, and must be executed according to the tenor of it. It is unusual to require that more than two or three of the commissioners named shall act, so that one in each nomination be present, to execute it.

Secondly: It was ruled that the drawer of a bill which was protested, having paid twenty per cent. damages thereon, cannot, in an action against him by the acceptor on another account, offset them against the acceptor, who had funds in his hands to have paid the bill, because they are unliquidated damages.

<sup>1</sup> [Published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]