

Case No. 5,871.  
[4 Dall. 410.]

GUPPE ET AL. V. BROWN.

Circuit Court, D. Pennsylvania.

Oct. Term, 1805.

COMMISSION TO TAKE DEPOSITIONS—HOW EXECUTED.

[A commission issued to four persons jointly to take depositions in England cannot be validly executed by three of them; and depositions taken by three will be ruled out, on the objection of a party, although the two commissioners nominated by him participated.]

[See *Banert v. Day*, Case No. 836.]

A commission had issued to four commissioners, jointly, to take the depositions of witnesses in England. It was executed and returned by three of the commissioners only, two of whom, however, were of the defendant's nomination. At the trial of the cause, the defendant's counsel objected to the reading of the depositions; and cited 1 Bac. Abr. 202; 2 Inst. The plaintiffs' counsel observed, that the commission had not issued in the usual form; but insisted that as the defendant's commissioners had attended, the objection could not be maintained on his part.

Ingersoll & Tod, for plaintiffs.

Franklin & Dallas, for defendant.

BY THE COURT. The objection is fatal. The commissioners do not derive their authority from the parties, but from the court, and as it is a special authority, it must be strictly pursued. The power given to four, cannot be executed by three, commissioners. The evidence overruled.