

Case No. 5,877.

GUSTINE v. RINGGOLD.

[4 Cranch, O. C. 191.]<sup>1</sup>

Circuit Court, District of Columbia.

Dec. Term, 1831.

COMMISSION TO TAKE DEPOSITIONS—WITNESS LIVING WITHIN ONE HUNDRED MILES.

The court will not order a commission to issue under the Maryland law of 1773 (chapter 7, § 7), to take the deposition of a witness who resides out of the District of Columbia, but within one hundred miles of the place of trial, because this court has jurisdiction to compel the attendance of the witness.

Mr. Marbury moved for a commission to take the deposition of a witness residing within one hundred miles of this place, but out of this district, and relies upon the Maryland law of 1773 (chapter 7, § 7), which authorizes the court to issue such a commission when there are material and competent witnesses “residing or living out of this province,” and contended that a witness, residing out of this district, was residing out of this province, within the meaning and spirit of the act That the judiciary act of congress of 1789 [1 Stat. 73] does not authorize the sending of a subpoena beyond this district That the marshal of Virginia has no right to serve an attachment from this court; nor is he bound to serve a subpoena; and if he refuses, this court cannot attach him.

THE COURT (THRUSTON, Circuit Judge, contra), refused to issue the commission, because it has jurisdiction to compel the attendance of a witness, if within one hundred miles; and, therefore, he does not reside out of this province, within the meaning of the act of Maryland, whose object was to obtain the testimony of a witness whose personal attendance could not be obtained. It may be difficult to compel the marshal of the district in which the witness may reside to do his duty; but this will not authorize the court to dispense with the personal attendance of the witness, and admit his deposition to be taken in chief, and to be used absolutely upon the trial.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]