

Case No. 6,407.

HERMAN v. HERMAN.

[4 Wash. C. C. 555.]<sup>1</sup>

Circuit Court, E. D. Pennsylvania.

Oct. Term, 1825.

AFFIDAVIT TO ANSWER—FOREIGN COUNTRY—BEFORE WHOM TAKEN.

Under an agreement of the solicitors, that an answer to be given in France may be taken and sworn to before any person authorised to administer oaths by the laws of France; the agreement is not complied with if the answer be sworn to before the American consul.

[Cited in *Semmens v. Walters*, 55 Wis. 681, 13 N. W. 889.]

The defendant resided in France, and the solicitor for the plaintiff consented that his answer might be taken and sworn to before a notary public, or other person authorized to administer an oath by the laws of France. The answer was taken by the American consul, and the question now was, whether it was properly taken and sworn to within the terms of the agreement.

Mr. Rawle, for plaintiff.

Mr. Duponceau, for defendant.

WASHINGTON, Circuit Justice. 1 Denisart, tit. "Consuls," p. 519, has been cited to prove that, by the French law, consuls are authorized to administer oaths. But it is quite obvious that the author, in the place referred to, is speaking of the power and duties of French consuls, residing in foreign countries; and not of foreign consuls residing in France.

It was contended, for the defendant, that the act of congress concerning consuls gives them a power to administer oaths. We think that it is not generally given by this act but that it is confined to particular cases of a maritime or commercial character. But if the power were general, it would not remove the difficulty, the agreement being, that the answer should be taken by some person authorized to administer oaths by the law of France. But for this agreement it must have been taken under a *dedimus potestatem*.

The answer was not allowed.

[The court refused to dismiss the bill filed in this case, because the complainant had omitted for three terms to proceed, unless one term's notice of the application to dismiss was given. Case No. 3,757.]

<sup>1</sup> [Originally 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.]