

Case No. 7,078.

IRVING v. SUTTON.

[1 Cranch, C. C. 575.]¹

Circuit Court, District of Columbia.

Nov. Term, 1809.

DEPOSITIONS—NOTICE.

Notice of a motion for a dedimus to take depositions in a Foreign country may be given to the attorney at law.

N. Herbert, for defendant, moved for a commission to take depositions of witnesses residing in England. Notice of the motion had been served on E. J. Lee, the attorney at law of the plaintiff, who resided in England.

E. J. Lee objected, that the notice under the act of Virginia, 29th of November, 1792, § 13, p. 279, ought to be given to the party himself or his attorney in fact, or agent. *Budicum v. Kirk*, 3 Cranch [7 U. S.].297.

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THE COURT was of opinion that notice of the motion may be given to the attorney at law. The opinion of Marshall, c. J., in *Buddicum v. Kirk* [3 Cranch (7 U. S.) 297] is extrajudicial—a mere dictum—and relates to the notice of the time and place of taking the deposition, not to notice of the motion for a commission.

¹ [Reported by Hon. William Cranch, Chief Judge.]