# JONES ET AL. V. KNOWLES.

Case No. 7,474.
{1 Cranch, C. C. 523.}

Circuit Court, District of Columbia. Dec. Term, 1808.

FRAUD—COLLUSION—PROOF—DEPOSITION TAKEN UNDER ACT OF CONGRESS—CERTIFICATE OF PERSON TAKING—REQUISITES.

1. The court will not permit a party to prove other fraudulent transactions of the other party with strangers, and not connected with the present case, in order to fortify a charge of fraud and collusion in this case.

2. The magistrate who takes a deposition under act of congress must certify all the facts necessary to make it evidence under the statute.

Assumpsit on a promissory note for 1,500 dollars made by the defendant {Henry Knowles} to Eber Hale, dated March 19th, 1805, payable to Eber Hale on the 7th of September, 1805, who indorsed the note in this form, viz.: "Baltimore, September 7, 1805. The within note I assign to Jones & Passmore for such part of it as will be security for them for five hundred and fifty-six dollars and eighty-six cents, which Mr. Henry Knowles will pay if not paid by me in sixty days. Eb. Hale." There were counts for goods sold and delivered, and for goods sold and delivered to Hale at the request of the defendant, and defendant's promise to pay.

F. S. Key, for plaintiffs, offered to examine a witness to prove that Hale had, after the date of the receipt, viz. in September, 1805, offered to pass other notes of the defendant in Alexandria; that the defendant did not, before these notes became due, deny the notes, when shown to him; but when payable, produced receipts in bar, and to prove that Hale was in the habit of purchasing goods with Knowles' notes. This testimony was offered as evidence of a fraudulent collusion between Knowles and Hale in the present case.

But THE COURT (FITZHUGH, Circuit Judge, absent) refused to admit it, saying that no man could come prepared to meet evidence and charges respecting every transaction of his life, without notice.

Mr. Jones then offered the deposition of Eber Hale, taken under the act of congress before the mayor of Hartford.

Mr. Morsell objected that the witness was

interested. He only assigned five hundred dollars, part of the notes to the plaintiffs. If they can recover the whole they are trustees for Hale for the balance. Parol evidence cannot be received of P., being mayor of Hartford. The mayor does not state that he was not of counsel for one of the parties; has not certified the reasons of taking the deposition and does not state the residence of the witness, nor of the parties. The mayor was not competent to certify a release from the plaintiffs to the witness, nor a copy of the release. The original ought to be produced.

Mr. Jones, contra. Parol evidence is competent to prove A. B. to be mayor. If the mayor was of counsel for the plaintiffs, the defendant must show it. It appears by his certificate that the witness was in Hartford, and that appears to be the reason of the taking the deposition.

Hale in the deposition itself states that he has no interest in the note. He stands indifferent between the parties. If the plaintiffs recover against Knowles, Knowles may recover against Hale upon his receipt. The copy of the release certified by the mayor, is sufficient. It is competent for the plaintiffs to prove that Hartford is more than one hundred miles from Washington, and that the witness lives in Hartford, and that the defendant lives in Georgetown.

The original release belongs to the witness. It is not in the power of the plaintiffs to produce it. The witness is not obliged to produce it.

The mayor acted judicially, and was competent to judge whether it was a release, and to certify the same.

THE COURT (FITZHUGH, Circuit Judge, absent) were of opinion that the deposition was not admissible in evidence, no cause being certified by the mayor for taking the deposition, nor whether notice was given and on the ground of the interest of the witness.

THE COURT was of opinion that the mayor ought to have certified all the facts necessary to make the deposition good evidence under the act of congress.

The plaintiffs had leave to amend their declaration by adding two new counts, on payment of all antecedent costs. Juror withdrawn.