

## Case No. 10,235.

## NICHOLLS v. WHITE.

{1 Cranch, C. C. 58.}<sup>1</sup>

Circuit Court, District of Columbia. Jan. Term, 1802.

DEPOSITION—NOTICE—OBJECTIONS—SECONDARY  
EVIDENCE OF CONTENTS OF  
PAPERS—NECESSARY AFFIDAVIT.

1. One hour's notice of taking a deposition in Alexandria is sufficient.
2. It is not a good objection to a deposition taken by *dedimus*, that it is in the handwriting of the counsel of the opposite party.

{Cited in *Jones v. Oregon Cent Ry. Co.*, Case No. 7,486. Cited, but not followed, in *United Staffs v. Pings*, 4 Fed. 716.]

{See *Atkinson v. Glenn*, Case No. 610.]

3. The affidavit of the party is sufficient to prove to the court the loss of papers, so as to admit secondary evidence of their contents.

Mr. Simms, for plaintiff, objected to the deposition of Thomas White, that the notice given of the time and place of caption was not reasonable. The notice was served between eleven and twelve o'clock A. M. to attend at Gadsby's tavern between twelve and one o'clock of the same day.

But THE COURT decided the notice to be reasonable.

Mr. Simms then objected, that the deposition was in the handwriting of the defendant's counsel, contrary to the act of congress (1 Stat. 89).

But the deposition being taken by *dedimus* from this court, and according to common usage, THE COURT unanimously decided that it might be read. The deposition was to prove the contents of certain papers which had been used at a former trial of the same cause.

Mr. Simms objected to the reading of the deposition, until the loss of the papers was proved.

THE COURT thought the loss was sufficiently proved by the affidavit of the defendant himself, which was made to procure the new trial.

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

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