

PENTLETON v. FORBES.

[1 Cranch, C. C. 507.]¹

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

DEPOSITION—MANNER OF
TAKING—OATH—NOTICE.

A judge who takes a deposition under the act of congress [1 Stat. 73] must certify that the witness was cautioned and sworn to testify the whole truth, and that notice was given to the adverse party, or the reason why it was not given.

Debt by the plaintiff as assignee of a promissory note made by the defendant.

Mr. Youngs, for defendant, offered to read a deposition which had been taken under the act of congress, without notice, before Judge Parker, in Virginia, who certified that it was written by himself, and subscribed and sworn to by the deponent, and that the deponent resided more than one hundred miles from the county of Alexandria, and District of Columbia.

The judge did not state any reason for not giving notice to the plaintiff, nor that the deponent was cautioned and sworn to speak the whole truth, nor the reason of taking the deposition, nor the distance of the place of caption.

THE COURT (DUCKETT, Circuit Judge, absent) rejected the deposition, because the judge had not certified that the witness was cautioned and sworn to testify the whole truth; nor whether the plaintiff was notified of the time and place of caption; nor the precise place of caption. (It was said to be in Westmoreland county, Virginia.) Nor did he certify the place of residence of the plaintiff or his agent.

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

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