

SUTTON V. MANDEVILLE.

 $[1 Cranch, C. C. 115.]^{\underline{1}}$

Circuit Court, District of Columbia. March, 1803.

DEPOSITION–AFFIDAVIT–DISTRICT OF COLUMBIA–LAWS GOVERNING.

- 1. The court in Alexandria will not grant a commission to examine witnesses in a suit at common law, without affidavit showing it to be necessary for the purposes of justice.
- 2. The laws of Virginia, in the county of Alexandria, are to be considered, with respect to the laws of the United States, as common law, that is, not repealed without negative words or other and repugnant provisions upon the same subject. (Quære.)

Debt on bond. Issue, and continued to next term.

Mr. Mason moved for leave to issue a commission to take depositions in the state of Massachusetts, under the act of congress, (Judiciary Act), 1789, § 30 (1 Stat. 88).

Refused by THE COURT, because not grounded on affidavit showing it to be necessary to the justice of the case.

A question was made whether commissions for taking depositions must be taken out under the law of Virginia, or whether they may be taken out under the act of congress, without ten days' notice required by the Virginia law.

MARSHALL, Circuit Judge, said that he had been informed by the chief justice of the supreme court of the United States, that it was the opinion of that court that the laws of Virginia were to be considered in this district, with regard to the general laws of the United States, as the common law is considered with regard to the statute law, viz., that it is not altered without negative words, or an absolute inconsistency, so that both cannot stand together. [See Cases Nos. 13,648, 13649, and 13651.] ¹ [Reported by Hon. William Cranch, Chief Judge.]

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