

Case No. 17,380.

WELLFORD v. MILLER.

[1 Cranch, C. C. 485.]¹

Circuit Court, District of Columbia.

July Term, 1808.

DEPOSITIONS—WITNESS RESIDING WITHIN 100 MILES.

This court will not grant a commission in a civil action at common law, to take the deposition of a witness residing in Virginia within one hundred miles of the place of trial, because he may be summoned to attend personally.

[Cited in *Voss v. Luke*, Case No. 17,014.]

Upon affidavit that witnesses resided in Fredericksburg (less than one hundred miles from Alexandria)—

Mr. Youngs, and Mr. Jones, for the plaintiff, moved for a commission to Virginia, to take the depositions of those witnesses to be used as well in a suit in chancery, as at common law depending in this court. The chancery suit was at issue and a general dedimus had been awarded.

THE COURT (DUCKETT, Circuit Judge, absent) suffered the commission to issue in the chancery suit, considering it as in and of the general commission heretofore awarded. But refused it in the common-law case, because the witnesses (residing within one hundred miles) might be summoned to attend this court personally.

The law of Virginia of 29th Nov. 1792, § 13, p. 279, was cited by Mr. Youngs, which allows a commission to issue when the witness resides beyond sea, or in a foreign country, or in any other of the United States.

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