

Case No. 18,005.

WOODWARD v. HALL.

[2 Cranch, C. C. 235.]¹

Circuit Court, District of Columbia.

April Term, 1821.

DEPOSITION—SUFFICIENCY OF CERTIFICATE—PAROL EVIDENCE.

1. The magistrate who takes a deposition under the act of congress must certify the reasons of its being taken.
2. The amount of the costs of a suit in New York may be proved by parol.

This was a suit brought to recover the amount of costs in an action in New York, for which the defendant had agreed to be responsible.

Mr. Law, for plaintiff, offered the deposition of Richard Riker, prothonotary of the court in New York, stating the amount of the costs taxed, and a copy of the bill of costs as taxed.

Mr. Jones, for defendant, objected that the judge who took the deposition had not certified the reasons of its being taken.

Mr. Law, contra. The judge certifies that the deponent is of New York, and a counselor at law, and that the deposition was taken at New York. The fact thus appears that the deponent resided more than one hundred miles from the place of trial, which is a good reason for taking the deposition.

THE COURT (THRUSTON, Circuit Judge, absent) decided that the certificate was not sufficient, and for that reason rejected the deposition. But it was afterwards read, by consent, subject to the question as to the competency of the matter thereof.

Mr. Jones, for defendant objected that the existence of the suit in New York, and the amount of the costs taxed, were matter of record, and could only be proved by an exemplification of the record; so, also, that the plaintiff was attorney in the cause. This is not a suit for the attorney's fees only, but for costs paid by the attorney.

Mr. Law, contra. The defendant, by his letter to the plaintiff, admits the existence of the suit in New York, which is equivalent to record evidence. Mr. Riker is the officer whose duty it was to tax the costs. When a cause is settled by the parties as this was, it is not necessary or usual to tax the costs.

THE COURT (nem. con.) was of opinion that the parol evidence was competent to prove the bill of costs.

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