

Case No. 18,157. YOUNG ET AL. V. DAVIDSON.
[5 Cranch, C. C. 515.]¹

Circuit Court, District of Columbia.

Nov. Term, 1838.

TAKING OF DEPOSITION—NOTICE.

In taking a deposition under the 30th section of the judiciary act of 1789 [1 Stat 88], the notice must be given by the magistrate before whom the deposition is to be taken; a notice given by the party is not sufficient.

Assumpsit [by John M. Young and others against John Davidson] for work and labor.

Upon the trial, R. J. Brent, the plaintiffs' counsel, offered to read in evidence to the jury the deposition of one P. A. Russell, taken de bene esse, before the mayor of "Washington.

Mr. Marbury, for defendant, objected that the notice to the defendant was given by the plaintiffs, and not by the magistrate, as required by the act of congress of September 24, 1789, § 30 (1 Stat. 88).

THE COURT (THRUSTON, Circuit Judge, absent) for that reason rejected the deposition.

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