

1810.

Wilson
vs
Williams

objection. The defendant excepted; and the verdict and judgment being against him, he appealed to this court.

The cause was argued before CHASE, Ch. J. BUCHANAN, GANTT, and EARLE, J.

Harper, for the Appellant. 1. The question under the first bill of exceptions, arises on the ground that it does not appear that the commissioners, named in the commission, took the oath required, before some person legally authorised to administer it. The court will not presume that the persons, before whom the oath appears to have been taken, had proper authority. This is not similar to *Bryden vs. Taylor*, 2 *Harr. & Johns*. 396, nor *De Sobry vs. Terrier*, *Ibid* 191. In the former case, the court presumed that the person, who acted as a justice, was such, because they were bound to know who were the justices of the peace, records thereof being in the court; but this court are not bound to know, nor have they the means of knowing, the officers of a foreign country; they can only know legally, by having it certified to them under the seal of such country. The court are bound to notice a public seal, as in *De Sobry vs. Terrier*, such seals being evidence of themselves.

2. The second bill of exceptions rests upon a variance between the third count in the declaration, and the affidavit offered to support it. In that count it is stated that the soap was sold at six dollars for the whole quantity; and the affidavit stated it to have been sold at six dollars per box. This is a substantial variance. But even if it was not, it would still be fatal; for where a written instrument is professed to be set out, it must be done word for word.

Hinder, for the Appellee. 1. The objection to the execution of the commission offered in evidence in the first bill of exceptions, has no force. If this commission is defectively executed, there never was one legally executed. Here the county court delegated an authority to certain persons, who certify that they have performed what the court directed. If this is not evidence, then the court are not to believe that the commissioners examined the witnesses; and they must have other proof that the depositions of the witnesses were properly taken. In the cases of *Bryden vs. Taylor*, and *De Sobry vs. Terrier*, the ob-