

under the seal of the proper officer, that the person who administered the oath or affirmation was then in truth the officer he professed to be; *Hartshorne v. Hands*, 2d June, 1795, MS.; as where an answer had been sworn to before a justice of the peace of the District of Columbia; and it was certified, in the usual form, by the clerk of the county, that he was duly commissioned at that time, the answer was received. *Murdock v. Forrest*, 1803 and 1815, MS.; *Gibson v. Tilton*, 1 Bland, 352.

But in the case under consideration, the affidavit of the truth of the answer of the defendant Philip A. L. Contee, purports to have been made before a justice of the peace of Westmoreland County, **285** *in the State of Virginia, without any further authentication whatever. This, if allowed, would place the simple attestation of every justice of the peace, over the whole Union, upon a footing with that of such officers of this State. I do not think it would be safe to extend our comity so far. A reasonable and just degree of caution demands, that some solemn additional public testimonial should be required to shew, that the judicial officer or magistrate before whom such an affidavit has been made was, in truth, the public functionary he states himself to be. I am, therefore, of opinion, that the authentication of this paper is not such as to entitle it, on that ground, to be received as the answer of the defendant Philip A. L. Contee.

But the plaintiffs have expressly consented to receive this as the answer on oath of Philip A. L. Contee, without any further or other authentication; and that they may so receive it, is warranted by every day's practice of this Court, as well as by many authorities to be found in the English books to the same effect. — *v. Lake*, 6 Ves. 171; — *v. Guillim*, 6 Ves. 285; *Bayley v. De Walkiers*, 10 Ves. 441; *Harding v. Harding*, 12 Ves. 159; 1 *Harri. Prac. Chan.* 285. If, on its being so received by the plaintiff, it will bind the respondent as effectually as if made upon oath, I can see no reason why it should not be equally as binding upon any co-defendant so far as his interest may be affected by the answer of such defendant on oath; since such co-defendant could not except to it because of its not having been sworn to, or because of its insufficiency, or for any other cause. I am, therefore, of opinion, no fraud being shewn or even intimated, that this must be regarded as the answer of Philip A. L. Contee, to all intents and purposes whatever.

The next inquiry is, whether Eleanor Dawson has alleged, or shewn a deficiency of assets. In her answer she says, "that she has not yet been able to settle up the estate of the said testator, and that there are considerable debts now due to the same which are still unpaid; and the assets now in her possession are insufficient to discharge the debts due by the testator."