

upon their face to have been taken on the *day mentioned*; they do not appear to have been taken *at the place* designated in the notice, which in my opinion is a fatal objection. I am not by any means prepared to say that it should appear upon the face of a deposition, that it was taken at the *hour* mentioned in the notice. In the case of *Calvert vs. Coxe*, 1 *Gill*, 95, the defendant was notified that the deposition of Mr. Swann would be taken at his dwelling-house on a day mentioned, between the hours of 12 at noon, and 6 in the afternoon; and the return of the commissioners stated that they had taken the depositions on the day mentioned, and at the place mentioned, but without saying between the hours designated in the notice, was held to be sufficient, and the deposition was admitted.

But in the case of *Collin's, lessee, vs. Elliott*, 1 *H. & J.*, 1, the General Court decided "that it ought to appear by the depositions themselves that they were taken agreeably to notice, both as to *place* and *time*, or they cannot be received as evidence, and that proof could not be admitted to show that they were in fact taken according to notice," and this decision was, on appeal, affirmed by the Court of Appeals. Sustained by this authority, and by the reason of the thing, I am of opinion, that the exceptions to the depositions of Denton and Somerville are well taken, and that they cannot be read in evidence.

This disposes of the case, except with regard to claim No. 45, which was not noticed in the former report of the Auditor, under an impression that it was the same as claim No. 4. It turns out now to be a different claim, and is set up by Robert J. Young, administrator *d. b. n. c. t. a.*, of Anne Mackall, and is founded upon the two sealed notes of the deceased, Thomas Mackall, one of which bears date the 24th of December, 1829, and payable on the 24th of December, 1834, and the other on the 22d of March, 1833, and payable on the 22d of March, 1835. These claims were filed on the 24th of October, 1849, being more than fourteen years after the maturity of the last of them, and they are consequently barred by limitations, pleaded against them by Louis Mackall, Junior, unless there be