

Whereupon it is prayed, that the administratrix of *Henderson* may be compelled to pay the amount of the purchase money for the land, with interest; or if the sale should not be admitted or proved, that the heirs of *Henderson* may be compelled to re-convey the land to such of the plaintiffs as are entitled thereto; and that the plaintiffs may have such further and other relief as to the court shall seem meet and consistent with equity. And forasmuch as the defendants were all of them non-residents, the plaintiffs prayed an order of publication, which was passed accordingly, directing the defendants to be warned to appear on or before the 29th day of May then next.

The plaintiffs, by their bill, filed on the 15th of December, 1821, in this case, alleged, that *Henry Waring*, of Washington county, in the District of Columbia, was the only person by whom they expected to be able to prove their claim; that he was then advanced in life, and if deprived of his testimony, they were apprehensive that they would not be able to establish their claim. They, therefore, prayed, that a commission might be issued to perpetuate his testimony, and that it might be issued to *James Dunlop*, jun'r, *John Marbury*, *J. J. Stull*, and *Joseph Brewer*, and for such other relief, &c. Annexed to this bill there was an affidavit of the truth of the facts stated in it, made before an assistant judge of the Circuit Court of the United States for the District of Columbia; and a certificate of the Secretary of State, that he was at the time an assistant judge.

15th December, 1821.—JOHNSON, Chancellor.—Issue the commission as prayed. (a)

The testimony of the witness was taken and returned accordingly; but as the testimony of this same witness was afterwards regularly taken, it is unnecessary here to take any further notice of this examination *de bene esse*.

The defendants *David English* and wife, on the 8th of May, 1822, filed their answer, which sets out in these words: "The answer of *David English*, and *Lydia English* his wife, formerly *Lydia Henderson*, administratrix of *John Henderson*, to the bill of complaint of *Janet Lingan* and others. The said defendant saving

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(a) RYMER v. DULANY—1787.—Petition for a commission *de bene esse*, stating that the petitioners, the plaintiffs, were in want of the testimony of Abraham Cream, of Frederick county, who was a material witness for the petitioners in the said cause, and who was about eighty years of age, and sick and impotent. Granted.—*Chan. Pro. lib. S. H. H. lett. C. fol. 296.*