

each state of our perpetually intermingling confederacy, know more of the forms and modes of proceeding of the officers and magistrates of every other state than of any foreign nation whatever. And besides, the harmonies of our peculiar system of government seem to require, that the magistrates and tribunals of each state should extend the practice of comity and credit toward those of every other state, as far as safety to the rights of persons and property will permit, and that may be to a considerable extent; for although, in such cases, there can be no prosecution for perjury against any one here, who has, abroad, testified on oath, or made affidavit to the truth of a fact, which can be shewn to be false, yet the parties may be punished for practising an imposition upon the court. (i)

This court has, in fact, acted upon the distinction between testimonials from other states of our Union and those from foreign nations for many years past. Prior to the revolution, certainly as late as the year 1761, it was the practice here, in accordance with the English mode of proceeding, to send a *didimus potestatem*, even to a neighbouring colony, to take the answer of a defendant resident there. (j) But soon after the revolution a *didimus potestatem*, seems to have been dispensed with, and answers from other states of our confederacy by being sworn to before a mayor or other principal magistrate of a city, or a justice of the peace, on its being certified 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; (k) 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. (l)

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,

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(i) *Omealy v. Newell*, 8 East. 372.—(j) *Chancery Proceedings*, lib. D. D. No. J. fol. 59.

*PROUT v. SLATER*.—On 3d of April, 1799, on the petition of the defendants here to take the answer of one of them who resided in London, a commission was issued to four commissioners or either of them, that they or either of them administer the oath. The answer so taken was certified by the commissioners, and then certified by a notary public.—*Chancery Proceedings*, lib. S. H. H. No. 7, fol. 25.

(k) *Hartshorne v. Hands*, 2d June, 1795. M. S.—(l) *Murdock v. Forrest*, 1803, and 1815, M. S.; *Gibson v. Tilton*, 1 Bland, 352.