

1823.


Gracie
v.
Palmer.

[PRACTICE.]

GRACIE and others, *Plaintiffs in Error*,

v.

PALMER and others, *Defendants in Error*.

It is not necessary to aver on the record, that the defendant in the Circuit Court was an inhabitant of the District, or was found therein at the time of serving the writ. Where the defendant appears, without taking the exception, it is an admission of the regularity of the service.

Mr. *Webster* moved to dismiss the writ of error *March 5th.* in this case, for want of jurisdiction. He stated, that the plaintiffs below, Palmer and others, were described to be aliens, and subjects of the king of Great Britain, and the defendants, Gracie and others, to be citizens of the State of New-York; and the suit was brought in the Circuit Court of Pennsylvania. It did not appear, that the defendants were inhabitants of, or found in the District of Pennsylvania, at the time of serving the writ; and he, therefore, contended, under the 11th section of the Judiciary Act of 1789, c. 20. that no civil suit could be brought against them by original process in that District.

Mr. Chief Justice MARSHALL stated, that the uniform construction, under the clause of the act referred to, had been, that it was not necessary to aver, on the record, that the defendant was an inhabitant of the District, or found therein. That

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it was sufficient if the Court appeared to have jurisdiction by the citizenship or alienage of the parties. The exemption from arrest in a District in which the defendant was not an inhabitant, or in which he was not found at the time of serving the process, was the privilege of the defendant, which he might waive by a voluntary appearance. That if process was returned by the marshal as served upon him within the District, it was sufficient; and that where the defendant voluntarily appeared in the Court below, without taking the exception, it was an admission of the service, and a waiver of any further inquiry into the matter.

Motion denied.