Case No. 858.

BANK OF ALEXANDRIA v. YOUNG.

{2 Cranch, C. C. 52.}[1]

Circuit Court, District of Columbia. July Term, 1812.

NEGOTIABLE INSTRUMENTS—INDORSER'S LIABILITY—NOTICE OF DISHONER.

1. If the indorser of a note write on the face of it these words, "Credit the drawer," the note and indorsement are not evidence of money had and received by the indorser to the use of the indorsee, who had discounted the note and applied the proceeds to the credit of the maker.

2. The Bank of Alexandria, in 1807, was bound to demand payment of the maker, and give notice to the indorser of the non-payment, before they could maintain an action against him.

{See Magruder v. Union Bank of Georgetown, 3 Pet (28 U. S.) 87.}

At law. Assumpsit {by Bank of Alexandria} against {Robert Young} the indorser of the note of James and Alexander Smith, dated June 13th, 1807, at fifty-four days, payable on the 6th and 9th of August. Payment was demanded and notice given on the 9th of September. At the bottom of the note was this memorandum, "Credit the drawer."

THE COURT (THRUSTON, Circuit Judge, absent) said that such a note, with such a memorandum on its face, was not evidence of money had and received by the defendant to the use of the plaintiffs, on the count for money had and received.

Mr. C. Simms, for the plaintiffs, contended that it was not necessary, in order to make the indorser liable, that he should have had notice of the non-payment by the makers. By the charter of the bank, (section 20,) the indorser was as much bound to pay the note, at the moment it became payable by the maker, as the maker himself was. The language of Chief Justice Marshall in Yeaton v. Bank of Alexandria, 5 Cranch, {9 U. S.} 49, is very strong to that effect.

Mr. E. J. Lee, contra. The only point decided in that case is, that it is not necessary to sue a solvent maker before suing the indorser. The charter of the Bank of Columbia has the same words as the charter of the Bank of Alexandria, and yet the supreme court, in the case of French v. Bank of Columbia, 4 Cranch, {8 U. S.} 141, have considered it as a case governed by the laws of bills of exchange.

THE COURT (FITZHUGH, Circuit Judge, contra) was of opinion that the bank was bound to demand payment from the maker, and, on his refusal, to give notice thereof to the indorser, before they could maintain an action against him.

[1] {Reported by Hon. William Cranch, Chief Judge.}