Case No. 1,376.

BEVERLEY v. BEVERLEY.

{2 Cranch, C. C. 470.}[1]

Circuit Court, District of Columbia. May Term, 1824.

NEGOTIABLE INSTRUMENTS—DEMAND AT PLACE OF PAYMENT—ACTION AGAINST MAKER.

When a place of payment is inserted in the body of a promissory note, it is not necessary, in an action by the payee against the maker, to prove a demand of payment at the place named in the note.

At law. Debt upon a promissory note made by the defendant, {Peter R. Beverley,} to the order of the plaintiff, {James B. Beverley,} for $150.33, at ninety days, dated at Alexandria, D. C, August 21, 1822, payable in the Union Bank of Georgetown. The declaration, which was in debt, after setting out the note, avers that the defendant did not, ninety days after the date of the note, pay to the order of the plaintiff, in the Union Bank of Georgetown, the said sum of $150.33, wherein action accrued to the plaintiff to demand and have of the defendant the said sum of $150.33; yet, though often requested, the defendant hath not paid the same, nor any part of it to the plaintiff, etc., but refuses, etc., to the damage of the plaintiff, $100, etc. Judgment was confessed by the defendant, with leave to move the court to strike it out. {Motion to strike out the judgment overruled.}

C. C. Lee, for the defendant, now moved to strike it out, contending, that when a place of payment is inserted in the body of the note, a demand of payment at that place is necessary, in order to put the maker in default, and give the plaintiff a right of action. The declaration avers that the defendant promised to pay in the Union Bank, but does not aver that payment was ever demanded in that bank. Poth. Obi. 139; Chit. Bills, (Am. Ed.) 321; Sanderson v. Bowes, 14 East, 500; Boitodaile v. Middleton, 2 Camp. 53; Bowes v. Howe, 5 Taunt. 30, 35; Com. Dig. tit. "Condition," G. 9, pl. 4; 1 Saund. 32; Morton v. Lamb, 7 Term R. 125; Roche v. Campbell, 3 Camp. 247; Nicholls v. Bowes, 2 Camp. 498; Foden v. Sharp, 4 Johns. 183; Lang v. Brailsford, 1 Bay, 222.

Mr. Mason, contra.

When shall the demand be made, at or in the bank? The plaintiff was not obliged to demand payment the moment the note was payable. He may yet demand it there. If the plaintiff's cause of action does not accrue until the plaintiff shall have so demanded payment, the statute of limitations has not yet begun to run upon this note. Judge Dade, in Virginia, decided that such a demand was not necessary to charge the maker, who is liable everywhere, and at all times, within the time of limitation.

THE COURT overruled Mr. Lee's motion, and refused to set aside the judgment.

See Ruggles v. Patten, 8 Mass. 480; Herring v. Sanger, 3 Johns. Cas. 71; Woodbridge v. Brigham. 12 Mass. 403; Berkshire Bank v. Jones, 6 Mass. 524; 1 Saund. 33; Carter

v. Ring, 3 Camp. 459; Capp v. Lancaster, Cro. Eliz. 548; Co. Litt. 210b; Com. Dig. tit. "Condition," G, 9.

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

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