

Case No. 4,219.

{2 McLean, 580.}<sup>1</sup>

DWIGHT V. WING ET AL.

Circuit Court, D. Michigan.

Oct. Term, 1841.

VENUE IN CIVIL CASES—HOW LAID—NEGOTIABLE INSTRUMENTS—NOTICE TO INDORSER—PLEADING.

1. A venue in the body of the declaration is sufficient, without being stated in the margin.
2. By the present rules of pleading in England, a venue is laid only in the margin.
3. An averment of due notice, is sufficient to charge the indorser of a note or bill. Under such an allegation, proof of the facts may be made.

Mr. Bates, for plaintiff.

Mr. Joy, for defendants.

OPINION of THE COURT. This action is brought against the defendants, as indorsers of a promissory note, payable at the Bank of Michigan. To the declaration there is a demurrer, for the following reasons: First: There is no venue set forth in the margin of the declaration; Second: The averment of notice, of nonpayment, is not laid with certainty, as to time or place. There is no formal venue laid in the margin of the declaration; but there is a venue in the body of it and that is sufficient. By the rule adopted in England, Hilary Term, 4 Wm. IV., the venue, in the body of the declaration, is to be omitted, and it is laid in the margin only. Under this rule, the venue, not being laid in the margin, is ground of demurrer. There is an averment of demand, of the drawer of the note, when it became due, and that due notice of nonpayment was given to the defendants. This is all the law requires. Under the averment of due notice, all the facts, in proof of that allegation, may be given in evidence. *Firth v. Thrush*, 8 Barn. & C. 387; 2 Man. & R. 359. Demurrer overruled, and judgment.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]