

Case No. 5,087.

FREEMAN V. PEROT ET AL.

[2 Wash. C. C. 485.]<sup>1</sup>

Circuit Court, D. Pennsylvania.

Jan., 1811.

BILLS AND NOTES—ACCEPTANCE AND PROTEST—PAYMENT—DISCHARGE.

The defendants accepted a bill of exchange, for the honour of the first endorser, the bill being under protest, agreed to pay any person authorized to receive the money, and to give a discharge; this acceptance did not bind the defendants to pay, without the holder putting his name on the bill, or giving, as required, an indemnity to the defendants.

This was an action upon a bill of exchange, drawn by G. on the defendants, at sixty days, in favour of Joseph and Samuel Darrell, which came by endorsement to the plaintiff [Joshua Freeman]. The bill was presented in due time for acceptance, and was noted; and when at maturity, the defendants accepted it for a part of the sum, and accordingly it was protested. The defendants then accepted for the balance, for the honour of the Darrells, the endorsers, and to pay to any person authorized to receive the money, and to give a discharge. It was proved that the plaintiff, before the presentation of the bill, left Philadelphia,

but gave to Mr. Worth an order on the\* de-fendants to pay him the amount of the bill, whose receipt, the order stated, would be “a full discharge. The defendants, upon the production of this order, refused to pay, without an endorsement of the plaintiff’s name on the bill; but agreed to dispense with that, upon receiving a bond of indemnity, which Worth refused to give.

Mr. Rawle, for defendants, objected, that without such indorsement, the defendants were not bound to pay; that the protest was not regular, as it stated that it was made at the request of Mr. Worth, who doesnotappear, on the face of the bill, to be authorized to make it; and of course, the drawer and endorser might, on that ground, resist the claim of the defendants, if they had paid. He objected, also, that there was no protest for non-acceptance. Cases cited: 3 Term R. 761; Beaw. Lex Merc. 459, 456; Chit. 116; 1 Esp. 112; [Gorgerat v. M’Carty] 2 Dall. [2 U. S.] 144.

Mr. Dallas, for plaintiff, cited Chit 24, 25, 26; Kyd, 99; Marcus, 71.

WASHINGTON, Circuit Justice (charging jury). Before the defendants could be compelled to pay this bill, the plaintiff’s agent should have shown himself authorized to place him in a situation to maintain all the rights to which he was entitled. This bill was accepted only in part, and was protested for the residue. The acceptance, supra protest, was for the honour of the payee; and although proof of payment might possibly be sufficient in an action against the person for whose honour the bill was partly accepted, upon a count for money paid to his use, yet, as the defendants, would have a right to sue all the endorsers above them, for whose honour it was accepted, as well as the drawer, such proof would not be sufficient, In an action against the drawer or such endorsers, if there had been any. As to them, at least, he must sue as endorsee. But in this case, the plaintiff was the last endorsee, and he has neither endorsed it in blank, nor to his agent It was contended by the plaintiff, that the endorser who pays to a subsequent endorsee, may sue the drawer, or his endorser, upon proving payment This may be so; but in that case, the endorser may strike out all the subsequent endorsements, and appear as the last endorser on the bill. In this case, the defendants could not have so appeared, without an endorsement by Freeman; and his name is not on the bill. It was further insisted, that Worth had an implied power, from the order, to make the endorsement This may be questioned, but need not be decided; because, if he had, he ought to have offered to make it, when it was demanded by the defendants, and the want of it made the ground of their refusal to pay. The verdict, therefore, must be for the defendants.

Plaintiff suffered a nonsuit

<sup>1</sup> [Originally published from the MSS. of Hon. Bushrod Washington. Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]