

10FED.CAS.—11

Case No. 5,302.

GELSTON v. ADAMS.

[2 Cranch, C. C. 440.]¹

Circuit Court, District of Columbia.

Nov. Term, 1823.

BILLS AND NOTES—ASSIGNMENT AFTER DISHONOR—SUIT BY ASSIGNEE.

If the payee of a promissory note, after it has been dishonored, assigns it to a debtor of the maker, and then gives the maker a release upon his surrendering all his effects to a trustee for the benefit of his creditors, the assignee cannot recover upon the note in an action against the maker, who had no notice of the assignment until after the deed of trust and release had been executed.

This was an action by the assignee of a promissory note for \$436.31, made by the defendants [A. and A. H. Adams] to Jonathan Janney, and due on the 25th of July, 1822, when it was protested. Janney assigned it to the plaintiff on the 1st of August, 1822. On the 14th of August, 1822, Janney, then being a creditor of the defendants to the amount of \$66, upon an open account, attended a meeting of the creditors of the defendants, who laid before them a list of their debts, and stating Janney to be a creditor for the amount of the note, as well as of the open account. Janney did not inform the defendants of the assignment of the note, but signed the release, and accepted the satisfaction given by the defendants, which was an assignment of all their effects to a trustee for the benefit of their creditors.

THE COURT (THRUSTON, Circuit Judge, absent), on the prayer of Mr. Taylor, for defendants, instructed the jury that if, from the evidence, they believed the facts to be as above stated, the plaintiff could not recover, although they might be satisfied by the evidence that the plaintiff was debtor to the defendants to the amount of \$288.90, until and at the time of the transfer of the note.

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