GILMAN v. KING et al.

Case No. 5,444.

{2 Cranch, C. C. 48.}[1]

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

BILLS AND NOTES—LAW OF PLACE WHERE NEGOTIABLE—INDORSER AS WITNESS FOR MAKER.

1. A promissory note made in Georgetown, D. C, in the year 1810, payable to C. L. Nevitt or order, at 60 days, "negotiable in the Bank of Alexandria," is governed by the laws in force in Alexandria; and the holder in an action against the maker, must allow all just discounts against the payee before notice of the assignment given to the maker.

2. An indorser is a competent witness for the maker of a note, to prove that the indorsement was without consideration, and to give credit to the note, but the payee is not a competent witness for the plaintiff.

Assumpsit upon the promissory note of A. King and Company, dated September 7, 1810, at sixty days, payable to C. L. Nevitt or order, "negotiable at the Bank of Alexandria," indorsed by Nevitt to Preston, and by Preston to the plaintiff. The defendant claimed to discount C. L. Nevitt's note to him, under the Virginia law of the 4th of December, 1786, § 4, pp. 36, 37, by which the assignee is bound to allow the defendant all just discounts before notice of the assignment.

E. J. Lee, for plaintiff, contended that by the 19th section of the act of congress "concerning the bank of Alexandria" (2 Stat 625), such a note, when indorsed, was to be considered as a bill of exchange, and as governed by the laws applicable to that species of mercantile instruments. But it was discovered that the printer had misrepresented the date of that act February 15, 1810, instead of 1811, which was subsequent to the

date of the note, and therefore could not affect its character for negotiability.

Mr. Lee and Mr. Taylor then contended that the note was to be governed and construed by the law of the place where it was made, and cited Robinson v. Bland, 2 Burrows, 1077; Stapleton v. Conway, 3 Atk. 727; 1 Eq. Cas. Abr. 288, 289; Melan v. Duke De Fitzjames, 1 Bos. & P. 142; Talleyrand v. Boulanger, 3 Ves. 449; Holman v. Johnson, Cowp. 343; and Alves v. Hodgson, 7 Term R. 241.

Mr. Swann and Mr. Jones, for defendant, cited Robinson v. Bland, 2 Burrows, 1077; Norton v. Rose, 2 Wash. [Va.] 233; Lord Ranelaugh v. Champant, 1 Eq. Cas. Abr. 289.

THE COURT (nem. con.) considered the note of A. King & Co. as an Alexandria contract, and suffered the note of C. L. Nevitt to be given in evidence by the defendant as a discount.

THE COURT permitted Preston, the indorser, to be examined as a witness for the defendant to prove that he (Preston) indorsed without consideration to give credit to the note; and refused to admit C. L. Nevitt, the payee, as a witness for the plaintiff, because, if the plaintiff succeeded, the witness would be discharged from his liability.

The verdict was for the defendant, and THE COURT (nem. con.) refused a new trial, after argument.

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