

Case No. 6,658.

HOME V. SEMPLE ET AL.

{3 McLean, 150.}¹

Circuit Court, D. Indiana.

May Term, 1843.

DEBT—ACTION OF—WHEN MAINTAINABLE—PARTIES.

1. An action of debt will lie where the sum is certain, and it is the duty of the defendant to pay the amount to plaintiff.
2. The action may be brought by the assignee against the acceptor of a bill; and consequently by the payee against the acceptor.
3. An indorser may bring debt against the drawer, although there may be intermediate indorsements, by striking out those indorsements.

At law.

Wright & Patterson, for plaintiff.

H. B. L. Engram, for defendants.

OPINION OF THE COURT. This is an action of debt brought by the indorsee against the drawer of a bill, there being several intermediate assignments. A general demurrer was filed. It is laid down in *Hardr.* 435, that debt does not lie by a payee against the acceptor of a bill for want of privity. But debt will lie wherever the common law raises a duty, and the acceptor is bound legally and morally to the payee. He accepts and thereby promises to pay to the payee of the bill the sum named. There is then a privity between them, on which, according to the doctrine in *Hardress*, an action of debt may be sustained. In *Bishop v. Young*, 2 Bos. & P. 78, it was held that debt would lie by the payee of a note against the maker, where the note was expressed to be for value received. In that case the doctrine laid down by *Hardress* was considered. And in *Raborg v. Peyton*, 2 Wheat. [15 U. S.] 385, the court says: "In general, the legal predicament of the maker of a note is like that of the acceptor of a bill. Each is liable to the payee for the payment of the note or bill in the first instance; and after indorsement, each incurs the same liabilities. And if an action of debt will lie in favor of the payee of the note against the maker, it is not easy to perceive any sound principle, upon which it ought to be denied against an acceptor of a bill. The acceptance of a bill is just as much an admission of a debt between the immediate parties, as a drawing of a note." It has been held that debt will lie in favor of a payee against the drawer, in case of non-payment by the acceptor. *Hard's Case*. 1 Salk. 23; *Hodges v. Steward*, Skin. 346; 10 Wend. 341. Upon the whole, we think the action of debt in this case is sustainable, the plaintiff striking out the intermediate indorsements, and that the demurrer must be overruled. Judgment.

¹ [Reported by Hon. John McLean, Circuit Justice.]