

Case No. 7,572. JULLARD v. REMINGTON.  
[3 Wkly. Notes Cas. 372.]

Circuit Court, E. D. Pennsylvania.

Oct 4, 1876.

PLEADING AT LAW—SPECIAL PLEA—USURY.

A special plea in assumpsit, averring that the contract was entered into in another state, by the law of which it was usurious, is in Pennsylvania good on special demurrer.

Sur demurrer to special plea. Assumpsit upon a promissory note for \$8,120, made by Beckman Remington to the order of A. D. Juillard. Special plea: That the contract was a usurious one; that it had been made in the state of New York, and was therefore subject to the law of that state, which provided that all contracts for a greater rate of interest than seven per cent per annum should be wholly void. Demurrer, on the ground that the special plea amounted to the general issue.

A. Sydney Biddle and R. C. McMurtrie, for the demurrer, argued that the plea was argumentative in that it merely went to show that there was no legal promise, and amounted to a general denial of the plaintiff's cause of action as declared on evidence in support of the alleged defence would be admissible under the general issue, and in such case a plaintiff is not required to submit to a special plea, which on special demurrer is bad. *Hallett v. Dowdall*, 18 Q. B. 16; *Morgan v. Pebrer*, 3 Bing. (N. C.) 457; *Dawson v. Tibbs*, 4 Yeates, 349; *Stansbury v. Marks*, 4 Dall. [4 U. S.] 130; *Gaw v. Wolcott*, 10 Barr [Pa. St] 43; *Beals v. See*, Id. 56.

Frank C. Fallon and John Fallon, contra.

That the contract was made in New York, and that the New York law is different from that in this state, were properly pleaded specially. *Steph. Pl.* 285-289; *Mostyn v. Fabrigas*, 1 Smith, Lead. Cas. 1037; 1 Chit. Pl. 214-221; *Van Auken v. Dunning*, 3 Wkly. Notes Cas. 15; *Strawn v. Park*, 1 Phila. 178. (In the statement by Sharswood, J., of the rule in regard to special pleadings in the report of this case in 1 Phila., there is an accidental omission of the word "not.")

THE COURT (MCKENNAN, Circuit Judge, and CADWALADER, District Judge) entered judgment for the defendant on the demurrer.