

Case No. 8,827.

MCINTOSH v. SUMMERS.

[1 Cranch, C. C. 41.]<sup>1</sup>

Circuit Court, District of Columbia.

Oct. Term, 1801.

CONTRACTS—IN WRITING—NOVATION—ORAL AGREEMENT.

Oral evidence of an agreement that the defendant should retain certain notes as security against other notes, may be given although there be a written agreement to return them on demand.

Trover for sundry notes. Evidence was given of a demand and refusal, the defendant stating that he held them as counter security to indemnify him against his indorsement of a note held by Tafts and Brooks. Evidence on the part of the defendant was produced of conversations between the plaintiff and defendant in which it was agreed, or understood that the latter was to retain the notes for that purpose.

THE COURT instructed the jury that if they should be of opinion that McIntosh had agreed that the papers should be left with Summers for that purpose, then he had a lien on them: and that in such case his refusal was no evidence of a conversion.

Mr. Lee, for plaintiff, moved the court to instruct the jury that an oral agreement to leave the notes in his possession could not control the written agreement to return them on demand. Which instruction the court refused to give; and a bill of exceptions was taken, but the case was never carried to the supreme court, the verdict being for the plaintiff.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]