MARET ET AL. V. WOOD.

Case No. 9,067.

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

Circuit Court, District of Columbia. Dec. Term, 1826.

PLEADING AT LAW—GENERAL ISSUE—WHAT IT ADMITS.

By pleading the general issue the defendant admits the right of the plaintiffs to sue by the name of Charles Maret & Son, without naming the son; and a note, indorsed to the plaintiffs by that name, and produced by them on the trial, is prima facie evidence of the existence of such a firm.

Assumpsit, on the defendant's promissory note for $163.25, dated May 27, 1820, payable twelve months after date to one Thomas Williams, or order, and by him indorsed "to Charles Maret & Son." Plea, non assumpsit, and issue. The declaration stated that "William Wood was attached to answer to Charles Maret & Son, trading under the firm of Charles Maret & Son," without naming the son, whereupon the said plaintiffs complain, &c.

Mr. Hall, for defendant, prayed the court to instruct the jury that the plaintiffs could not recover unless they proved, by other evidence than the indorsement, the existence of such a house or copartnership as that of Charles Maret & Son; which instruction THE COURT refused to give, (THRUSTON, Circuit Judge, absent,) being of opinion that the defendant, by pleading the general issue, had admitted the existence of such a firm and the competency of the plaintiffs to sue by that name; and that if the defendant had now any remedy, it must be by motion In arrest of judgment.

MORSELL, Circuit Judge, was of opinion that the production of the note by the plaintiffs, indorsed to them, by that name, was prima facie evidence of the existence of such a firm.

Verdict for the plaintiff.

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