

Case No. 9,245.

MASON v. MASON.

{3 Cranch. C. C. 648.}<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1829.

BILLS AND NOTES—INDORSER—SUIT AGAINST PRIOR INDORSER.

The plaintiff indorsed a note (as town indorser,) already indorsed by two others, for the accommodation of the maker, and at maturity was obliged to take it up. Held, that he may recover of the first indorser the whole amount paid to take up the note.

Assumpsit by the last indorser against the first indorser of a promissory note made by Thompson P. Mason, payable to and indorsed by the defendant, Richard B. Mason, and by H. Ashton. The note was offered for discount, but the bank required a town indorser, and the plaintiff, who resided in Alexandria, indorsed it. It was then discounted for the benefit of the maker, and, at maturity, paid by the plaintiff.

The defendant contended, that as he and Mr. Ashton indorsed it for the accommodation of the maker, he was only liable for one half; but

THE COURT (nem. con.), at the prayer of the plaintiff, instructed the jury that the defendant was liable for the whole amount paid by the plaintiff to take up the note.

THRUSTON and MORSELL, Circuit Judges, were of opinion that this case differs from that of McDonald and Magruder at Washington, in this particular, that here the plaintiff was not originally one of the indorsers before the note was offered for discount.

CRANCH, Chief Judge, did not think that that circumstance was material, because he was of opinion that the prior indorser was liable to the subsequent for the whole, unless there be an agreement to the contrary.

{See Case No. 9,246.}

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