

MOWER ET AL. V. BURDICK.

[4 McLean, 7.]¹

Circuit Court, D. Michigan.

June Term, 1845.

PLEADING AT
 LAW—PLEA—TRAVERSE—ARGUMENTATIVELY
 DENIED.

A plea which argumentatively denies a fact averred in the declaration, is demurrable. The traverse must be direct.

{This was a proceeding by Mower and Stevens against Burdick.}

Barstow & Douglass, for plaintiffs.

Joy & Porter, for defendant.

OPINION OF THE COURT. This action is brought upon a sealed instrument, dated the 9th of June, 1839, in which the defendant agreed to indemnify the plaintiffs and save them harmless against the payment of a certain promissory note, made and signed by the plaintiffs jointly and severally, with one Samuel Mower, then of Michigan City, Indiana, for the sum of seventeen hundred dollars, payable in one year, for the benefit and use of the said Samuel Mower. And the plaintiffs aver, that on the 12th day of July, 1842, they paid the said note. The second count in the declaration was substantially the same on another note.

The defendant pleaded that the said Samuel Mower did himself take up and pay each of the said several promissory notes when they became due, without this, that the said plaintiffs paid the sums due upon the said promissory notes when they became due, or any part of all or either of them in manner and form, etc., which the said defendant is ready to verify. To this plea, the plaintiffs demurred. This plea is bad. The plaintiffs aver that they paid the notes after they became due; the plea alleges that Mower paid them when they became due, which is not a direct answer

to the averment in the declaration. This may be a good argument to show that the plaintiffs could not have paid the notes as they allege, but it is an argumentative denial of the fact stated in the declaration, which should be traversed. Steph. Pl. 175-177, 181, 385. The case was discontinued.

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

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