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Case No. 9,903.

MUIR v. JENKINS.

{2 Cranch. C. C. 18.}[1]

Circuit Court, District of Columbia. Dec. Term, 1810.

NOTES—NEGOTIABILITY—ACTION BY HOLDER.

The indorsee of a promissory note, not payable to order, but expressed to be "negotiable at the Bank of Discount and Deposit," may maintain an action upon it in his own name, against the maker.

{Cited in Bank of Sherman v. Apperson, 4 Fed. 29.}

Jenkins made a note for $250, payable to Stebbins, without the words "or order," but made "negotiable at the Bank of Discount and Deposit." Stebbins indorsed it to the plaintiff. There was a verdict for the plaintiff, and a motion in arrest of judgment, by Caldwell & Porter, the defendant's counsel.

Mr. Jones, for plaintiff, contended that a promissory note, without the words "or order," is a note within the statute of Anne, so as to enable the payee to maintain an action thereon under the statute. That if it is a note within the statute for one purpose, it is so for all other purposes; and that therefore an indorsee of a note, not payable to order, may maintain an action in his own name under the statute. Nicholson v. Sedgwick, 1 Ld. Raym. 180; Burchell v. Slocock, 2 Ld. Raym. 1545; Smith v. Kendall, 6 Term R. 123; Chit Bills, 48, 108; Gibson v. Miner, 1 H. Bl. 569, 3 Term. R. 481; Tatlock v. Hams, 3 Term R. 174.

Caldwell & Porter, for defendant, cited Carlos v. Faneourt, 5 Term R. 482; Hodges v. Steward, 1 Salk. 125; Hill v. Lewis, Id. 133; Nicholson v. Sedgwick, 1 Ld. Raym. 180; Chit. Bills, 48; Imp. Mod. Pleader, 390; and contended that the words "negotiable at the Bank of Discount and Deposit at Washington," only confine the negotiability of the 957 note to that place, or make it payable out of a particular fund;

that promissory notes are put upon the same footing as inland bills; and that an inland hill, not payable to order, is not negotiable. They cited also, Smith v. Kendall, 6 Term R. 123; Banbury v. Lisset, 2 Strange, 1211; Chamberiyn v. Delarive, 2 Wils. 353; Dawkes v. De Lorane, 3 Wils. 207;Chit. Bills, 174; Evans, Bills, 139; Kyd, 34, 35, 63, 96, 97; Esp. 26.

Mr. Morsell, for plaintiff, in reply, cited Roberts v. Peake, 1 Burrows, 323, where the note was not payable to order, and was only payable upon an uncertain contingency; and the court decided that it was not a negotiable note, because the contingency was uncertain, without noticing the objection that it was not payable to order.

The COURT (CRANCH, Chief Judge, contra) overruled the motion in arrest, and rendered judgment for the plaintiff, on the ground that it was the intention of the defendant to make a negotiable instrument.

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