Case No. 10,468.

O'HARRA v. HALL.

{4 Dall. 340.}

Circuit Court, D. Pennsylvania. April Term, 1800.

CONTRACTS—EXPLANATION OR ALTERATION BY PAROL.

Case. This was an action brought by the assignee of a bond, against the assignor, upon a written assignment, in general terms. On the trial, Mr. Ingersoll, for the plaintiff, offered parol testimony to show, that the defendant had expressly guaranteed the payment of the bond. W. Tilghman objected, that as the contract of the parties was in writing, no parol testimony could be admitted, on a trial at law, to vary its expressions and import Mr. Ingersoll replied, that wherever there is an oral misrepresentation at the time of a sale, or transfer, even though the principal bargain is reduced to writing, the misrepresentation may be proved. A court of equity would, in such case, grant relief; and even the courts of law are now accustomed to regard actions on the case, like the present, as bills in equity. Moses v. Macferlan, 2 Burrows, 1005; {Thomson v. White 1 Dall. 1 U. S.} 428.

Before CHASE, Circuit Justice, and PETERS, District Judge.

CHASE, Circuit Justice. You may explain, but you cannot alter, a written contract, by parol testimony. A case of explanation, implies uncertainty, ambiguity, and doubt, upon the face of the writing. But the proposition now, is a plain case of alteration: that is, an offer to prove by witnesses, that the assignor promised something, beyond the plain words and meaning of his written contract. Such evidence is inadmissible; and has been so adjudged by the supreme court in Clarke v. Russel, 3 Dall. {3 U. S. 415.} As to the authority of Moses v. Macferlan, 2 Burrows, 1005, it has always been suspected, and has lately been over-ruled, on the principle, that the previous decision, there brought into question, was pronounced by a competent court. I grant, that chancery will not confine itself to the strict

rule, in cases of fraud, and of trust. But we are sitting as judges at common law; and I can perceive no reason to depart from it.

PETERS, District Judge. If we were sitting as judges in a state court, I should be inclined to admit the testimony, in order to attain the real justice of the cause; as there is no court of equity in Pennsylvania. But there is no such defect in the federal jurisdiction; and, therefore, when the party comes to the common law side of the court, he must be content with the strict common law rule of evidence.