

## PATTERSON V. ATHERTON.

{3 McLean, 147.}<sup>1</sup>

Circuit Court, D. Indiana.

May Term, 1843.

NOTES—ASSIGNMENT—PLEA OF PAYMENT TO  
ASSIGNOR—PLEADING AT LAW.

1. A plea that the defendant paid the note to the assignor, before he had notice of the assignment, cannot be sustained against the assignee.
2. The plea, should aver that the payment was made before the note was assigned, or before it was due. And so where the defendant alleges he paid \$500 to the assignor, before he had notice of the assignment. And the averment, that the balance was paid to the plaintiff is defective, as it does not appear that the plaintiff received it as such, in discharge of the note.

At law.

OPINION OF THE COURT. This action is brought on a promissory note, given to Buckminster & Barally, at Philadelphia, for \$1,073, on the 4th of March, 1836, payable in six months. The declaration alleges the note to have been assigned to the plaintiff before it became due.

The defendant pleaded, that after the execution of the note, and before he had notice of the assignment, and before the commencement of the suit, the defendant paid to the assignor the amount of the note. He also pleaded that before he had notice of the assignment, he paid to the assignor \$500, and after the assignment, and before the commencement of the suit, he paid the residue to the plaintiff.

To these pleas the plaintiff demurred.

The demurrer must be sustained to both pleas. In the first place, it does not appear that the payment was made to the assignor, before the note was due, or before it was assigned; and the second plea is defective, because it does not appear that the sum of

\$500 alleged to have been paid to the assignor, before notice of the assignment, was in fact made before the assignment, or before the note was payable; and it does not appear that the balance due was accepted by the plaintiff, as such, in discharge of the note.

There are other issues which require a jury.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]

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