

SACKETT V. DAVIS ET AL.

{3 McLean, 101.}¹

Circuit Court, D. Michigan.

Oct. Term, 1842.

NOTES—ACTION BY BEARER—ACT OF CONGRESS.

1. On a note payable to Thompson or bearer, suit may be brought in the name of the bearer.
2. He is not an assignee, and need not aver in the declaration the citizenship of Thompson.
3. Such a note is not within the act of congress, in regard to assigned instruments.

{This was an action at law by Sackett against Davis and Whitwood.}

Douglass & Walker, for plaintiff.

MCLEAN, Circuit Judge. This action was brought upon four promissory notes, described as payable to William P. Thompson, or bearer. The declaration alleges the citizenship of the parties to the suit; but the citizenship of Thompson is not averred, and on this ground a question of jurisdiction is raised.

If the plaintiff had sued as assignee, this objection would be fatal, as it would be necessary to show that suit might have been brought in this court by the assignor, at the time of the assignment. But the plaintiff does not sue as assignee, but as holder of the notes. The defendant promised to pay to Thompson, or bearer. Now the promise is to pay to either, and either may bring the action in his own name. The property in the note passes by delivery. And in such a case nothing more need be shown by the person who sues, than that he is the holder of the notes, or the bearer. The case is not within the provision of the act of congress in relation to the assignment of notes, &c.

The ground taken is not sustainable. Judgment for the plaintiff.

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

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