

## STETTINIUS v. MYER.

{4 Cranch, C. C. 349.}<sup>3</sup>

Circuit Court, District of Columbia. Nov. Term, 1833.

## ASSUMPSIT—TRIAL—INDORSEMENTS—SET-OFF.

1. The plaintiff may, at the trial, after the jury is sworn, strike out the second and third blank indorsements of the note, and fill up the first blank indorsement to himself.
2. In an action for goods sold at auction, for cash, the defendant may set off the plaintiff's note.

Assumpsit [by Samuel Stettinius against B. F. Myer's administrator] for goods sold at auction. Terms cash. The defendant pleaded in offset a promissory note of the plaintiff to Davidson, and indorsed by him and two others, all in blank.

Mr. Morfit, for plaintiff, objected that the defendant's title to the note was not complete, and cited *Day v. Lyon*, 6 Har. & J. 140.

Mr. Marbury, for defendant, contended that he had now a right, after the jury was sworn, to strike out the blank indorsements of the subsequent indorsers and their names, and to fill up the blank indorsement of Davidson, the first indorser, so as to make the note payable to Myer. And of that opinion was the whole court.

Mr. Morfit then contended that, as the sale of the goods by the plaintiff to Myer was at auction, and the terms of sale cash, the defendant could not set off the note of the plaintiff. And of that opinion was THRUSTON, Circuit Judge.

But THE COURT (THRUSTON, Circuit Judge, contra) overruled the objection. THRUSTON, Circuit Judge, afterwards agreed with the court, upon seeing the case of *Eland v. Karr*, 1 East, 375.

<sup>3</sup> [Reported by Hon. William Cranch, Chief Judge.]

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