

Case No. 16,326.

UNITED STATES v. SMITH.

[2 Cranch, C. C. 111.]<sup>1</sup>

Circuit Court, District of Columbia.

June Term, 1815.

FORGERY OF PROMISSORY NOTE—DEFECTIVE INDICTMENT—ACQUITTAL AND SECOND TRIAL.

1. A note of an unincorporated bank, “payable out of the joint funds thereof and no other,” is a promissory note within the meaning of the Maryland statute of 1799, c. 75, § 1.
2. The note must be precisely and accurately set forth in the indictment.
3. If the defendant be acquitted upon a flaw in the indictment, he will be remanded for trial at the next term.

Indictment [against Bennet Smith] for forging a promissory note of the Farmers’ & Mechanics’ Bank (not incorporated).

Mr. Lear and Mr. Law, for prisoner, objected to the admission of the note in evidence, because it was “payable out of the joint funds thereof, and no other,” and therefore not such a promissory note as was intended by the act of Maryland of 1799, c. 75, § 1, upon which the indictment was founded; it not being, as they said, a negotiable promissory note; and they said it was not a bank-note within the meaning of the Maryland act of 1793, c. 35, § 2; and therefore could not be given in evidence to support the averment that it purported to be a promissory note of the Farmers’ & Mechanics’ Bank.

But THE COURT (MORSELL, Circuit Judge, not sitting) overruled the objection.

The prisoner’s counsel then objected that in setting forth the note in the indictment, the signature was written “W. Marbury,” but the signature to the note was “Wm. Marbury,” and for that variance the court refused to suffer the note to be given in evidence.

Verdict, “Not guilty.” Prisoner remanded to be tried at the next term on a new indictment.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]