

Case No. 16,970.

VIRGINIA v. TURNER.

{1 Cranch, C. C. 261.}<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1805.

PAYMENT—NONNEGOTIABLE ORDER.

An order payable out of a particular fund, and not negotiable, is not payment of a preceding debt.

Debt on official bond as town-sergeant; breach, non-payment of fees put into his hands to collect for Bedinger; general replication and issue.

A copy of a list of fees, dated 5 May, 1800, with Turner's acknowledgment, was produced. At the bottom of the list was the following order:

"Sir:—Pay Mr. Russel, out of the sale of negroes, fifty dollars, and return Groverman's note. Charles Turner. 26th December, 1801. Wm. Turner."

Mr. Youngs, for defendant, prayed the court to instruct the jury, that if they should be of opinion, from the evidence, that Russel was the authorized agent of Bedinger, and that William Turner was the deputy-sergeant under Charles Turner, and that the order had remained in the hands of Russel, from its date to this day, then the order was a payment, unless the plaintiff can show that he has used due diligence to get the money from William Turner, and failed.

THE COURT refused to give the instruction, because it was not a bill of exchange, and being payable out of a particular fund, was not negotiable; and there is no evidence of the terms or conditions on which it was received by Russel, nor that it was agreed to be received by Russel on any terms; and it being merely an order by the principal on his deputy, is no more than an order on himself.

{See Cases Nos. 16,971 and 16,972.}

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