

PETTIT *v.* THE TOWN OF HOPE.

Circuit Court, N. D. New York. May 20, 1880.

COUPONS—PAYABLE TO BEARER—ASSIGNEE OF CAUSE OF ACTION.—The holder of a coupon payable to bearer is not an assignee of a cause of action within section 1, act March 3, 1875, (18 U. S. St. at Large 470.)

DEMURRER—FACTS RELIED UPON IN SUPPORT OF, NOT PLEADED.—Questions raised in argument as the ground of demurrer ought not to be disposed of on a demurrer to a complaint failing to make averment of facts in the cause which it is claimed vitiate the proceeding. They can only be disposed of when developed on the trial.

Parkhurst & Baker, for plaintiff.

J. M. Carroll, for defendant.

BLATCHFORD, C. J. This suit being on coupons, it must be held, according to the decision in *Cooper v. Town of Thompson*, (13 Blatchford, C. C. R. 434,) that the holder of a coupon, payable to bearer, is not an assignee of the cause of action, within section 1 of the act of March 3, 1875, (18 U. S. St. at Large, 470.)

Although the adjudication of the county judge is alleged to have been made on November 1, 1872, yet the complaint avers that the application to the county judge was made after the passage of the act of 1869, and before the issuing of the bonds. The complaint does not show that the application was made after the amendatory act of May 23, 1871, was passed. It may have been made before that. If made before that, the application seems to conform to the act of 1869. The questions raised in argument, as the demurrer by the defendant, ought not to be disposed of on a demurrer to a complaint which fails to make the averment of what is claimed by the defendant to vitiate the proceeding. Those questions can properly be considered only when all the facts are brought out on a trial.

The demurrer is overruled, with leave to the defendant to answer the complaint in 20 days on payment of costs.

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