

appear by affirmative allegations it is necessary that the foundation of the suit be a bill of exchange or a promissory note negotiable by the law-merchant. Its form at once precludes the idea that it is a bill of exchange, but it is claimed that it is a promissory note. It is not sufficient that it be a promissory note as between the parties, or even negotiable under certain circumstances and with certain conditions, but it must be negotiable by the law-merchant. It must be a positive promise and agreement to pay the holder a sum certain at a given date, without detraction or conditions; an amount that is easily determinable from its own face without further search or inquiry. The character of the note must determine the question of jurisdiction, and the fact that the party suing is willing to waive certain of his rights under it, and sue on such a portion of the contract as might constitute a negotiable instrument, cannot give it.

It is apparent that the last clause in the note in suit contains conditional provisions, which might be still undetermined at its maturity, so that it could never bear upon its face a fully settled amount due, which fact is conclusive against its negotiability under the law-merchant, and consequently against the jurisdiction in a suit upon it.

The fact that the instrument is under seal has also been urged, which objection, in the light of *Coe v. Cayuga Lake R. Co.* 8 FED. REP. 535, would seem to be fatal; but the form and substance of the note so fully determines all questions that a consideration of anything further is unnecessary.

Motion to dismiss is granted.

PALMER v. SCRIVEN and another, Receivers, etc.¹

(Circuit Court, S. D. Georgia. April 26, 1884.)

ACTION AGAINST RECEIVERS.

When based upon consent to sue, on petition to equity court, can only be entertained by that court.

Common-law Action for Personal Injury. Motion to dismiss for want of jurisdiction.

Denmark & Adams, for plaintiffs.

Chisholm & Erwin, for defendants.

PARDEE, J., (orally.) Permission to sue must be given by the equity court. Such permission cannot confer jurisdiction upon any other court, *ratione materiæ* or *ratione personæ*. In this case, the permission being obtained from the court of equity, this suit was permitted only to be brought in that court. There is no permission to sue

¹ Reported by W. B. Hill, Esq., of the Macon bar.

in this court on the law side. This court, as a court of law, is without jurisdiction, so far as the record shows, by reason of the citizenship of the parties, and consequently has no jurisdiction in the case. Motion granted.

LOCKE, J., concurs.

HAUSMEISTER v. PORTER, Treasurer, etc.

(Circuit Court, D. California. August 25, 1884.)

EQUITY JURISDICTION—ADEQUATE REMEDY AT LAW—REV. ST. § 723—PAYMENT OF COUPONS ON MUNICIPAL BONDS—MANDAMUS.

Where a writ of *mandamus* will lie to compel a city treasurer to pay coupons due on bonds of the city out of the fund provided by statute, or to compel the proper officers to set apart taxes collected as a sinking fund for the payment thereof, the bondholder has an adequate remedy at law, and cannot proceed by bill in equity, not ancillary to any pending proceeding at law, to enjoin the application of the funds to other purposes.

In Equity.

Rosenbaum & Scheeline and *S. C. Denson*, for complainant.

W. A. Anderson and *J. H. McKune*, for defendant.

SAWYER, J. This is a bill in equity, filed against the treasurer of Sacramento city by a holder of \$10,000 of the bonds, and \$600 overdue coupons thereon, of the city of Sacramento, issued in pursuance of the laws, and under the circumstances fully set forth in *Kennedy v. City of Sacramento*, 19 FED. REP. 580. The bill alleges the facts relating to the issue of the bonds and the amount held by complainant; that there is a large amount of money—\$174,000 and upwards—in the interest and sinking fund in the city treasury, applicable to the payment of said coupons, and something over \$170,000 of taxes and water rents, collected for the year 1883-84, in the city treasury, and that "it is the duty of said treasury to apportion and set apart to said 'interest and sinking fund' fifty-five per cent. of the whole of said revenues, and to hold and pay out the said fifty-five per cent. of said sums for the purposes of said fund and no other purpose;" that the complainant has demanded payment of said coupons held by him, and that said treasurer should set apart said 55 per cent. to said interest and sinking fund, and only apply it for the proper uses of said fund; that said treasurer refuses to comply with said demand, and is unlawfully diverting said fund to other objects of city expenditure, and, if not restrained from so doing, will appropriate the whole of said fund to such other objects, and leave nothing applicable to the payment of said bonds and coupons. He therefore asks, as relief, that defendant be perpetually enjoined from paying out said money for any other purpose than the liquidation of said bonds and coupons;