

MORGAN *v.* REINTZELL. (a)*Action by indorser against maker.*

In a suit against the maker of a promissory note, by an indorser, who has been obliged to take it up, the plaintiff must produce the note, upon the trial.

The payment of the money by the indorser, after protest, is a good consideration for an *assumpsit* on the part of the maker, to pay the amount of the note, with costs of protest.

The maker of a promissory note, payable to order, is, under the custom of merchants, liable to refund the amount of the note, and costs of protest, to an indorser who has been obliged to take up the note, after protest.

Reintzell v. Morgan, 2 Cr. C. C. 20, affirmed.

ERROR to the Circuit Court for the district of Columbia, sitting in Washington, in an action of *assumpsit*, brought by Reintzell against Morgan, upon a promissory note made by Morgan, payable to Reintzell, or order.

The declaration contained three counts : 1st. Upon the promissory note, in the usual form, under the statute of Anne ; 2d. For money paid, laid out, and expended ; and 3d. The following special count, viz :

“ And whereas also, afterwards, to wit, on, &c., the said William Morgan, according to the custom and usage of merchants, made his certain note in writing, commonly called a promissory note, his own proper hand being thereto subscribed, bearing date on the day and year aforesaid (August 9th, 1809) by which said note, the said William Morgan, sixty days after the date thereof, promised to pay to the said Anthony Reintzel, or order, five hundred dollars, without off-set, value received ; and then and there delivered the said note to *the said Anthony Reintzel ; and the said Anthony Reintzel, to whom, or to whose order, the payment of the [*274 said sum of money, mentioned in the said note, was to be made, before the payment thereof, or any part thereof, and before the time appointed by the said note for the payment thereof, that is to say, on the day and year last aforesaid, at the county aforesaid, indorsed the said note, his own proper handwriting being thereto subscribed ; by which said indorsement, the said Anthony Reintzel ordered and appointed the contents of the said note to be paid to the president, directors and company of the Bank of the United States, and then and there delivered the said note, so indorsed, to the said president, directors and company of the Bank of the United States, of which said indorsement, so made on the said note, the said William Morgan, afterwards, to wit, on the day and year aforesaid, had notice ; by reason whereof, and also by force of the statute in such case made and provided, the said William Morgan became liable for, and chargeable to pay to the said president, directors and company of the Bank of the United States, the said sum of money mentioned in the said note, according to the tenor and effect thereof, and in consideration thereof, assumed upon himself so to do. And the said Anthony Reintzel avers, that the said William Morgan, although afterwards, to wit, on the 8th day of October, in the year 1809, at the county aforesaid, he, the said William Morgan, was called upon by the said president, directors and company of the Bank of the United States, and solemnly required to pay the sum of money in the said note mentioned, refused to pay the same ; whereupon, afterwards, upon the day and year last aforesaid, the said president, directors and company of the Bank of the United States, having made no

(a) March 9th, 1812. Present, all the judges.

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order concerning the payment thereof, protested the said note, at the county aforesaid, according to the said usage and custom of merchants upon such non-payment; by reason whereof, the said Anthony Reintzel, according to the usage and custom of merchants, became liable to pay to the said president, directors and company of the Bank of the United States, the contents of the said note, together with the interest and damage which should accrue from the delay of payment thereof, and being so liable, afterwards, to wit, *275] on the day and year last aforesaid at the county *aforesaid, (did) pay to the said president, directors and company, the contents of the said note, and the costs of protest thereon, whereof the said William Morgan afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice. By reason of the premises, and by force of the statute and usage and custom of merchants, the said William Morgan became liable to pay to the said Anthony Reintzel the said sum of money in the said note mentioned, and the said costs of protest, and being so liable afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, upon himself assumed, and to the said Anthony Reintzel then and there faithfully promised, to pay the same, when he should be thereunto afterwards required; and which said costs of protest, and the said sum of money in the said note mentioned, amount unto the sum of \$502.28, current money, whereof the said William Morgan, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice."

After a general verdict for the plaintiff, in the court below, upon the issue of *non assumpsit* to all the counts, the defendant moved in arrest of judgment, and assigned as a reason therefor, that the last count in the declaration was bad. The court, however, overruled the motion, and rendered judgment upon the verdict.

The defendant took out a writ of error; and the cause was now submitted to this court, by *F. S. Key*, for plaintiff in error, and *Morsell*, for defendant, without argument.

March 13th, 1812. All the judges being present, MARSHALL, Ch. J., after stating the case, observed, that the court could see no error in the judgment. The payment of the money by the plaintiff, under the circumstances stated in the count, was a sufficient consideration for the *assumpsit*. The principal objection was, that the count ought to have been founded upon the note, so as to oblige the plaintiff to produce it on the trial. But it *276] states that *the note was paid by the plaintiff; and the court thinks that the note must have been produced upon the trial.

Judgment affirmed.