CASES DETERMINED

IN THE

SUPREME COURT OF THE UNITED STATES.

FEBRUARY TERM, 1815.

MANDEVILLE *v.* UNION BANK OF GEORGETOWN. (*a*)

Promissory note.—Set-off.—Estoppel.

By making a note negotiable in a bank, the maker authorizes the bank to advance on his credit, to the owner of the note, the sum expressed on its face; and it would be a fraud upon the bank, to set up off-sets against this note, in consequence of any transactions between the parties.

ERROR to the Circuit Court for the district of Columbia, for the county of Alexandria, in an action of *debt*, by the Union Bank against Mandeville, upon his promissory note to C. I. Nourse, indorsed to the bank. On the trial below, a special verdict was found which stated the following facts:

On the 15th of January 1811, Mandeville, then and always an inhabitant of the town of Alexandria (in the county of Alexandria), for a valuable consideration, made his promissory note, at the said town, payable to C. I. Nourse (or order), sixty days after date, negotiable at the Union Bank of Georgetown, payable at the bank of Potomac, in Alexandria, for $410.51.

The note was delivered to C. I. Nourse, and on the same day, indorsed by him, and offered for discount at the Union Bank, where it was regularly discounted for his use. On the 30th of the same month, Mandeville being informed that his note had been discounted, made no objection, and said, that he had funds to meet it. The note was not paid when it became due, and was protested for non-payment.

*10] *On the 16th of the same month (the day after the date of Mandeville's note), Charles I. Nourse, for a full and valuable consideration, executed and delivered to Mandeville, his note of that date, payable in 60 days, for $400, negotiable at the Bank of Alexandria, payable at the Bank of Columbia (in Georgetown). On the 30th of the same month, C. I. Nourse became further indebted to Mandeville, by the acceptance of his order of that date, drawn at sight, and by acceptance made payable on the

(*a*) February 8th, 1815. Absent, LIVINGSTON, TODD and STORY, Justices.

16th of February following, in favor of C. Page, for the use of Mandeville, for $64; neither of which had been paid. The Union Bank transacts its business in Georgetown, in the county of Washington. On the 2d of February 1811, Mandeville inserted an advertisement in the Alexandria Gazette, cautioning all persons against receiving assignments of any notes given by him to Nourse, as he had discounts against them.

Mandeville, in the court below, offered to set-off the note and acceptance of Nourse, against his own note upon which the suit was brought; but upon the special verdict, the court below rendered judgment against him for its whole amount; and he brought his writ of error.

By the laws of Virginia, in force in the county of Alexandria, the defendant is allowed to set-off against the assignee of a promissory note any just claim which he had against the original payee, before notice of the assignment of the note. But by the laws of Maryland, in force in the county of Washington, a promissory note, payable to order, is subject to the same rules as in England, under the statute of Anne.

On behalf of the plaintiff in error, it was contended, that the note, being made at Alexandria, and to be paid there, was to be governed by the laws of Virginia, and that, as he held Nourse's note, before he had notice of
*11] *the assignment of his own, he had a right to set it off in this suit. On the other side, it was said, that it was immaterial by which law the note was to be governed; for it was made with a view, expressed on its face, to be discounted by the plaintiffs; whereby the defendant had waived any set-off to which he might have a right. Besides which, upon being informed that the note was discounted by the plaintiffs, he did not object, nor insist upon his set-off, but said he had funds (meaning funds of Nourse's) to meet it. By which conduct also, he waived his right to the set-off.

February 9th, 1815. MARSHALL, Ch. J., delivered the opinion of the court, as follows:—It is entirely immaterial, whether this question be governed by the laws of Virginia or of Maryland. By neither of them can the discounts claimed by the plaintiff in error be allowed. By making a note negotiable in bank, the maker authorizes the bank to advance on his credit, to the owner of the note, the sum expressed on its face. It would be a fraud on the bank, to set up off-sets against this note, in consequence of any transactions between the parties. These off-sets are waived, and cannot, after the note has been discounted, be again set up. The judgment is to be affirmed, with damages at the rate of six per cent. per annum.

Judgment affirmed.