That the defendant be imprisoned for three months; that he pay a fine of $200; and that he stand committed, until this sentence be complied with, and the costs of prosecution paid.

Hollingsworth *v.* Adams.

Jurisdiction in foreign attachment.

Process of foreign attachment cannot be issued by a circuit court, when the defendant is domiciled abroad, or not found within the district, so that it can be served upon him.[1]

Foreign attachment, returnable to the present term. The defendant was stated to be a citizen of Delaware, in the process which had issued; and *M. Levy*, having produced an affidavit in proof of that fact, moved to quash the writ, on the ground that the federal courts had no jurisdiction, in cases of foreign attachment. By the 11th section of the judicial act (1 U. S. Stat. 78), it is expressly provided, that "no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court; and no civil suit shall be brought before either of the said courts against an inhabitant of the United States, by any original process, in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ." Now, this is a civil suit, brought here by original process against the defendant, who is an inhabitant of another district, and was not found in Pennsylvania at the time of serving the writ.

Thomas and *Hallowell*, on behalf of the plaintiff, wished for time to inquire into the practice; but not being able, on the next day, to assign any satisfactory reason in maintenance of the action,

The Court directed the writ to be quashed, with costs.

Wilkinson *et al. v.* Nicklin *et al.*

Bills of exchange.

The indorsement of a bill in blank, passes all the interest in it, to every indorsee in succession, discharged from any obligation subsisting between the original parties, which does not appear upon its face.

The fact that a bill is noted for non-acceptance, is not notice to a subsequent indorsee, of the existence of any equity between the original parties.

This was an action brought by the indorsees of a bill of exchange, drawn by McClenachan & Moore, upon George Barclay, of London, in favor of the defendants, and by them indorsed *in blank, to Arthur Crammond & Co., who likewise indorsed and discounted it with their bankers, [*397
the present plaintiffs, under the following circumstances: The defendants, having opened a commercial correspondence with Arthur Crammond & Co., of London, remitted the bill of exchange in question, to be passed to their credit, in their general account with those gentlemen. The bill was noted

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[1] Poland *v.* Sprague, 12 Pet. 300; Chaffee *v.* Hayward, 20 How. 208; Picquet *v.* Swan, 5 Mason 35; Richmond *v.* Dreyfous, 1 Sumn. 131; Clark *v.* New Jersey Steam Nav. Co., 1 Story 531; Sadler *v.* Fallon, 2 Curt. 579; Day *v.* Newark India Rubber Man. Co., 1 Bl. C. C. 628; Wilson *v.* Pierce, 15 Law Rep. 137.

on the face of it for non-acceptance. It was, afterwards, on the 4th of August 1796, paid in short, on account of Arthur Crammond & Co., with their blank indorsement, to the banking-house of the plaintiffs; but on the 19th of the same month, the amount was carried out to the credit of Arthur Crammond & Co., as if it had been then discounted by the plaintiffs; and it was said by a witness, examined under a commission, that, after this discount, the money had been duly paid upon the drafts of Arthur Crammond & Co.

The counsel for the *defendants* stated, that they proposed to show by evidence, that the bill of exchange was remitted on account of the defendants; and that Arthur Crammond & Co. were in very great pecuniary embarrassment, at the time of the alleged discount of the bill of exchange, and had soon afterwards become bankrupt. From these premises, from the nature of the previous deposit, and, above all, from the dishonored state of the bill, when it was deposited and discounted (which was enough to have prompted an inquiry into the real circumstances of the case), it was intended to argue, that the plaintiffs knew that the bill was, in fact, the property of the defendants; and that the eventual discount was colorable and collusive, for the mere purpose of recovering the damages, or of securing a pre-existing balance due to the plaintiffs from Arthur Crammond & Co., who were on the eve of a public failure. 3 T. R. 80. If the plaintiffs did know the facts, they cannot be entitled to any more benefit from the possession of the bills, than Arthur Crammond & Co. themselves.

The counsel for the *plaintiffs* (who had, indeed, anticipated the defence in their opening) insisted, that the general, unrestricted nature of the indorsement, had empowered Arthur Crammond & Co. to pass the bill to whomsoever they pleased; and that whatever might be the imputation on them for a breach of trust, it could not affect the plaintiffs, who had paid a valuable consideration for the bill; and who ought not to be charged with collusion and fraud, upon strained inferences and slight presumptions. Their knowledge of the transactions between the defendants and Arthur Crammond & Co. has not been proved; and it would be a violation of the most important commercial principles, of the most authoritative adjudications, to permit such a defence to be made, against the claim of an indorsee. The
*398] distinction between restricted indorsements, and indorsements *which leave the bill to a free negotiation, has been fully established (2 Burr. 1216, 1226–7); and an indorsee, in the latter case, cannot be affected even by letters accompanying the bill. Rep. temp. Hardw. 11. Nor does the reason of the case in 3 T. R. 80 (where the note was negotiated after the term of payment had elapsed), apply to a protest for non-acceptance. Bills are often so protested, and yet are eventually paid. The strongest presumption arising upon a protest for non-acceptance, is, that the drawee has not effects of the drawer in his hands, at the time of presenting the bill: but when a note has been protested for non-payment, the fair presumption is, that the drawer is either unable to pay it, or has a legal excuse for not paying it; and the purchaser of the note, under such circumstances, has a reasonable warning, and must take it at his peril.

CHASE, Justice.—The defence cannot be admitted. There is no rule more perfectly established, there is none which ought to be held more sacred in commercial transactions, than that the blank indorsement of a bill of exchange passes all the interest in the bill, to every indorsee, in succession, discharged from any obligation which might subsist between the original parties, but which does not appear upon the face of the instrument itself.

PETERS, Justice.—Though I can easily suppose cases of hardship may arise, and though I am disposed, indeed, to think that strong equitable circumstances now exist in favor of the defendants; yet, the rule of law is so well established, and, upon general principles, is so beneficial, that I cannot persuade myself, in any degree, to dispense with its operation. I am, therefore, of opinion, that the evidence in support of the defence proposed, ought not to be admitted.

Verdict for the plaintiffs.

Ingersoll and *Lewis*, for the plaintiffs. *E. Tilghman* and *Dallas*, for the defendants.