

adverse title and seisin in a stranger, can be given in evidence, to dispute such recovery. The very reason assigned against the admission of such evidence, shows the understanding of the court to be precisely what we now assert. It cannot be admitted, because a writ of right does not bring into controversy the right of the demandant as against all the world, but the mere right of the parties to the suit. But it does bring into controversy the mere right between these parties; and if so, it, by consequence, authorizes either party to establish, by evidence, that the other has no right whatsoever in the demanded premises; or that his mere right is inferior to that set up against him.

If, in the case at bar, the demandant had established an actual seisin, by occupation of the land, and taking the esplees, the case would then have presented precisely the point which was understood to be presented in *Green* *34] *v. Lister*; and from the opinion *given in that case, on that point, there is not the slightest inclination in this court to depart. We think, that the decision in the present case may well be made upon the principles which have been already expounded, without, in any degree, breaking in upon the doctrines of that case.

If we are right in this view of the subject, it is unnecessary to enter into a minute examination of the points made in the court below, since the evidence which was objected to, was, under the circumstances of the case, clearly admissible, for the purpose of disproving the seisin of the demandant. As to the instructions prayed for by the demandant, at the close of the evidence, and refused by the court, and as to the instructions actually given by the court, to the jury, it does seem necessary to pass them in minute review. Several of them turn altogether upon the deduction of title by the tenant, from the original patentee, whose patents they set up in defence. And as to the others, they may be disposed of, by the single remark, that no error has been shown by them, in the argument here, and no error is perceived by the court.

Judgment affirmed.

*35] *PAGE's Administrators *v.* BANK OF ALEXANDRIA.

Promissory notes.—Presumption of fact.

A bill or note is *prima facie* evidence, under a count for money had received, against the drawer or indorser.¹

But the presumption that the contents of the bill or note have been received by the party sued, and for the use of the plaintiff, may be rebutted by circumstances; and a recovery cannot be had, in such a case, where it is proved, that the money was actually received by another party.

ERROR to the Circuit Court of the District of Columbia, for the county of Alexandria. This was an action of *assumpsit*, brought by the defendants in error, the Bank of Alexandria, against the plaintiffs in error, the administrators of William Byrd Page, deceased.

The declaration contained two counts. The first was on a promissory

¹ Brown *v.* Noyer, 2 W. & M. 75; Heckscher *v.* Binney, 3 Id. 334; Bank of Alexandria *v.* Wilson, 2 Cr. C. C. 5; Stone *v.* Lawrence, 4 Id. 11; Hughes *v.* Wheeler, 8 Cow. 77; Olcott *v.*

Rathbone, 5 Wend. 490; Smith *v.* Van Loan, 16 Id. 659; Black *v.* Caffé, 7 N. Y. 281; Benjamin *v.* Tillman, 2 McLean 213; Frazer *v.* Carpenter, 1d. 235.

Page v. Bank of Alexandria.

note, which was set forth, as made by William Hodgson, and payable on demand, to the intestate, Page, who indorsed it to the Bank of Alexandria, where it was discounted, and the money paid to Hodgson. In support of this count, a note was given in evidence, drawn by Hodgson, in favor of, and indorsed by, Page, payable fifty-four days after date. The other counts were for money lent and advanced by the plaintiffs below to the intestate, Page, and for money had and received by him for their use. Evidence was also given, to show that the bank had *used due diligence in demand- ing payment of the maker, and in giving notice of non-payment to [36 the indorser; and that Page, in his lifetime, frequently promised the bank payment of the note, after it became due. Judgment was given for the plaintiffs below, on a demurrer to the evidence, and the cause was brought to this court by writ of error.

February 8th, 1822. This cause was argued by *Swann* and *Lee*, for the plaintiffs in error, citing *Sheehy v. Mandeville*, 7 Cranch 209; 1 H. Bl. 602; *French's Administrator v. Bank of Columbia*, 4 Ibid. 141; 2 H. Bl. 609; *Mackie v. Davis*, 2 Wash. 219; *Goodall v. Stuart*, 2 Hen. & Munf. 105; and by *Taylor*, for the defendants in error, citing *Tatlock v. Harris*, 3 T. R. 174; 3 Burr. 1516; 2 Wash. 233, 265; 6 Munf. 392; 5 Cranch 144; Ibid. 49; 1 Ibid. 290.

February 14th. LIVINGSTON, Justice, delivered the opinion of the court, and after stating the case, proceeded as follows:—Whether due diligence were used by the holder of the note, is immaterial now to inquire, as this court is of the opinion, that a note payable any number of days after date, could not be applied to a count describing it as one payable on demand.

The only remaining question is, whether this note were sufficient proof of the count for money lent and advanced, and for money had and received. There are, certainly, cases in which a promissory note, or an indorsement of such note, may be offered in *evidence, against the maker or indorser, [37 under a count of this nature, and if unconnected with other circumstances, may be sufficient proof, in itself, to charge the defendant. This proceeds on the ground, that such note warrants a fair presumption or inference, that the maker or indorser has received the contents of such note. But the court is not satisfied, that, in this case, the mere production of this note was sufficient proof of Page's having borrowed money of the bank, or of his having received moneys for their use. Although a note or an indorsement be *prima facie* evidence of a receipt of money from the holders, by the maker or indorser, yet, when all the other testimony in the cause produced by the plaintiffs themselves, shows unequivocally, that the money for which the note was made, was paid, not to the indorser, but to the maker himself, and for his sole use, the presumption arising from the mere act of indorsement is destroyed, and the party, in such case, ought not to be permitted to abandon his count on the written contract of the party, and apply it to the general money counts. It is admitted or proved, that this was a note made and indorsed for the accommodation of Hodgson, and that this fact was known to the directors of the bank, who received and discounted it as such, and for his sole use, and that he, and not Page, received the avails thereof. What pretence, then, is there, that this money was lent to Page, or that he received it for the use of the bank?

Ex parte Kearney.

There was also proof in the cause, that "Page, in his lifetime, frequently promised the bank payment of the said note, after it became due." This
 *38] promise *must be regarded as applying exclusively to the note which was offered in evidence, and was payable in fifty-four days after date : and if that note had been declared on, its influence on the cause would deserve serious consideration ; but it cannot be used in support of the other count, for the testimony, in terms, confines this promise to payment of the note, and says not a word of his undertaking to repay the money which the bank had loaned to him, or which he had received for their use.

The opinion of the court then is, that the bank can only recover from the administrators of Page, if at all, on his indorsement ; but that, having set forth the note incorrectly, and there not being sufficient evidence to support the second count, the present action cannot be sustained. The judgment of the circuit court is, therefore, reversed ; and judgment is to be entered for the defendants below.

Judgment reversed.

Ex parte KEARNEY.

Habeas corpus.

This court has authority to issue a *habeas corpus*, where a person is imprisoned under the warrant or order of any other court of the United States.¹

But this court has no appellate jurisdiction in criminal cases, confided to it by the laws of the United States, and cannot revise the judgments of the circuit courts, by writ of error, in any case where a party has been convicted of a public offence.²

*39] *Hence, the court will not grant a *habeas corpus*, where a party has been committed for a contempt adjudged by a court of competent jurisdiction.

In such a case, this court will not inquire into the sufficiency of the cause of commitment.³

The case of Crosby, Lord Mayor of London, 3 Wils. 188, commented on, and its authority confirmed.

February 9th, 1822. *Jones* moved for a *habeas corpus* to bring up the body of John T. Kearney, now in jail, in the custody of the marshal, under a commitment of the Circuit Court for the the District of Columbia, for an alleged contempt. The petition stated, that on the trial of an indictment in that court, the petitioner was examined as a witness, and refused to answer a certain question which was put to him, because he conceived it tended materially to implicate him, and to criminate him as a *particeps criminis*. The objection was overruled by the court, and he having persisted in refusing to answer the question, was committed to jail for the supposed contempt ; and for no other cause.

Jones, for the petitioner, now argued : 1. That this court has power to issue the writ of *habeas corpus* in every case where the personal liberty of the citizen is restrained, under the judicial authority of the Union. The jurisdiction is settled by a uniform series of decisions. It had been exer-

¹ See note to *Bollman's Case*, 4 Cranch 75.

² A writ of *habeas corpus* cannot be made to perform the functions of a writ of error ; to warrant the discharge of the petitioner, the sentence under which he is held, must be not merely erroneous and voidable, but absolutely

void. *Ex parte Reed*, 100 U. S. 23. And see *Ex parte Milligan*, 4 Wall. 2 ; *Ex parte Yenger*, 8 Id. 85 ; *Ex parte Lange*, 18 Id. 163.

³ *s. p.* *New Orleans v. Steamship Co.*, 20 Wall. 387 : *Hayes v. Fischer*, 102 U. S. 121 : *Williamson's Case*, 26 Penn. St. 9.