Pet., 75. But it is unnecessary to pursue the inquiry, as the decisions of this court are directly the other way; and so are most of the decisions of the State courts. *Donnelly* v. *Corbett*, 3 Seld., 500; *Poe* v. *Duck*, 5 Md., 1; *Anderson* v. *Wheeler*, 25 Conn., 607; *Felch* v. *Bugbee et al.*, 48 Me., 9; *Demerrit* v. *Exchange Bank*, 10 Law Rep. (N. S.), 606; *Woodhull* v. *Wagner*, Bald., C. C., 300.

Insolvent laws of one State cannot discharge the contracts of citizens of other States, because they have no extra-territorial operation, and consequently the tribunal sitting under them, unless in cases where a citizen of such other State voluntarily becomes a party to the proceeding, has no jurisdiction in the case. Legal notice cannot be given, and consequently there can be no obligation to appear, and of course there can be no legal default. The judgment of the Circuit Court is therefore affirmed with costs.

JUDGMENT ACCORDINGLY.

BALDWIN *v.* BANK OF NEWBURY.

The case of *Baldwin* v. *Hale* (*ante*, p. 223) affirmed.

Where negotiable paper is drawn to a person by name, with addition of "Cashier" to his name, but with no designation of the particular bank of which he was cashier, parol evidence is allowable to show that he was the cashier of a bank which is plaintiff in the suit, and that in taking the paper he was acting as cashier and agent of that corporation.

THE Bank of Newbury, a corporation, at the time of the suit and now, established in Vermont, brought an action of assumpsit in the Circuit Court of the United States for the Massachusetts district against Baldwin, upon a promissory note made by him in Massachusetts, where he resided. The following is a copy of the note. It was unindorsed:

$3500. BOSTON, Dec. 9, 1853.

Five months after date I promise to pay to the order of *O. C. Hale, Esq., Cashier*, Thirty-five hundred dollars, *payable at either bank in Boston*, value received.

J. W. BALDWIN.

After making the note, and pursuant to laws of Massachusetts existing prior to making it, Baldwin obtained a certificate of discharge from his debts, embracing by its terms all contracts to be performed within the State of Massachusetts after the passage of said laws. The Bank of Newbury took no part in these proceedings in insolvency in Massachusetts by which Baldwin obtained his discharge. This discharge he pleaded in bar of the action on this note.

He also pleaded the general issue, and under that plea objected that the note declared on was not competent evidence to support the declaration, and did not sustain the cause of action therein set forth. On this point the case, as agreed on by the parties, was as follows, viz.:

"It is agreed that O. C. Hale was *in fact the Cashier of the Bank of Newbury* at the time of the making of said note, and in case the court would admit such evidence after objection by the defendant, and not otherwise, and not waiving his objection to the same as incompetent, the defendant admits that said Hale mentioned in said note, in taking said note was acting as the cashier of and agent for the plaintiff corporation. If upon the foregoing facts the plaintiff has made out a legal cause of action in his favor, and the defendant's discharge, &c., is ineffectual as a bar of said action, the defendant is to be defaulted; otherwise the plaintiff is to become nonsuit."

Two points thus arose and were argued:

1. Whether the contract, being by a citizen of Massachusetts, was discharged by the proceedings in Massachusetts, even though to be performed in that State,—Hale being a citizen, and the Bank of Newbury being a corporation of Vermont, a different State.

2. Whether, if this discharge was not a bar, parol evidence was admissible to show that "O. C. Hale, Esq.," described in the note as "Cashier," *simply*, was cashier of the *Bank of Newbury*, the plaintiff in the suit, and that in taking the note, he acted as the cashier and agent of the corporation.

The court below ruled that the discharge pleaded was no bar, and also that the plaintiff had made out a cause of

action, and gave judgment accordingly. On error here the same two questions arose.

Mr. F. A. Brooks, for Baldwin, the plaintiff in error.

1. The first point will be determined by whatever decision is given in *Baldwin* v. *Hale*, *ante*, p. 223, and need not be discussed.

2. The second point has been precisely adjudged in the Circuit Court of the United States for Vermont, in *Bank of the United States* v. *Lyman*.* The note in that case was payable to "*Samuel Jaudon, Esq., cashier, or order.*" Jaudon was notoriously cashier of that bank, which was there plaintiff. The debt, no one doubted, was due to the bank and was not due to Jaudon. The case, completely, was our case. The Bank of the United States, having the same view of the law that the present plaintiff has, sued on the note without Jaudon's indorsement. The court decided that suit could not be so maintained. Prentiss, J., examined the subject on principle and on authority, both English and American. He begins with *Evans* v. *Cramlington*, so far back as Carthew,† affirmed in the Exchequer Chamber, 2 Ventris, 307. He says that the observations of Buller, J., in *Fenn* v. *Harrison*,‡ show, very plainly, that in his opinion no person could be considered as a party to a bill unless his name was upon it, and cites an observation of Lord Abinger,§ who, speaking of a case before him of "written simple agreements," says that "cases of bills of exchange are quite different in principle from those that ought to govern this case." His honor, after affirming that the doctrine enforced by him, he "may safely say," prevails in general in this country, though there may have been now and then an *occasional* departure from it, and that there can be "little doubt," when we refer to *Van Ness* v. *Forrest* (8 Cranch, 30), "how the rule of law on the subject is understood in the *national* court," thus sums up the subject:

"Upon the whole, it appears to me, that the true rule of law,

* 20 Vermont, 676. † Page 5. ‡ 3 Term, 757.

§ Beckham *v.* Drake, 9 Meeson & Welsby, 78.

as deducible from the adjudged cases, American as well as English, is that no person, although in fact a principal or partner, can sue or be sued upon a bill or negotiable note, unless he appear upon its face to be a party to it. A promissory note, according to the expression of very great judges, partakes in some measure of the nature of a specialty, importing a consideration, and creating a debt or duty by its own proper force. Being assignable, and passing by mere indorsement, it is necessary that the parties to it should appear, and be known, by bare inspection of the writing; for it is on the credit of the names appearing upon it that it obtains circulation. It is for these qualities, and on these considerations, that it is distinguished from written, simple contracts in general, and made subject to a different rule.

"The note in question here is a perfect instrument, without ambiguity in form or purpose, and must have operation and effect according to the terms in which it is expressed. It is made payable to '*Samuel Jaudon, Esquire, cashier, or order.*' The promise, therefore, is to pay him, or the person to whom he shall order it to be paid; and it would be repugnant to the terms of the instrument to allow the Bank of the United States, or any one else, without his order, to demand and enforce payment of it by suit. The bank is not named in the note at all, either as principal or otherwise; nor can it be inferred, from anything contained in the note, that it was made even in trust or for the benefit of the bank, or that the bank has any interest whatever in it. To admit parol evidence to show that the bank is the real principal, and hold that it may sue upon the note as such, would be to subject negotiable paper to the very uncertainty the law intended to avoid. It would be putting promissory notes upon the footing of other written simple contracts, and prostrate entirely the distinction, which sound policy, as well as the nature and purpose of negotiable securities, demands should be kept up between the two classes of cases."

The case in the national court* to which Prentiss, J., refers, strongly supports, by implication, our view. There a note was executed to *Joseph Forrest, President of the Commercial Company*, for merchandise belonging to and sold as the pro-

* Van Ness *v.* Forrest, 8 Cranch, 30.

perty of the company. On the question, whether an action could be maintained upon the note in the name of Forrest, Marshall, C. J., said:

"The suit is instituted on a promissory note given, not to the company, but to Joseph Forrest, president of the company. Although the original cause of action does not merge in this note, yet a suit is clearly maintainable on the note itself. Such suit can be brought *only* in the name of Joseph Forrest. *It can no more be brought in the name of the company, than if it had been given to a person not a member, for the benefit of the company.* The legal title is in Joseph Forrest, who recovers the money in his own name, as a trustee for the company."

The *Commercial Bank* v. *French* (21 Pickering, 486), whether decided rightly or the reverse of rightly, is not at essential variance with the doctrine we maintain; for in that case the note was drawn to no person by name. It was to the *Cashier* of the *Commercial Bank*, Boston, or his order. The name of the cashier was not in the note, while that of the bank was so, prominently. It was almost the same thing as if made to the bank by some loose form of name. On the face of the note it belonged to the Commercial Bank. Here no bank at all is specified. An individual is specified by name, and the name is not that of the party suing. "Cashier" is mere surplusage. Neither was the case in accordance with Massachusetts precedents. In one case in that State,* it was decided that a note payable to the treasurer of a parish might be sued in the name of the treasurer. And in another case in the same State,† that a note indorsed to S. S. Fairfield, *Cashier*, might be sustained in the name of Fairfield. It is true that these cases do not directly decide that action might not have been brought also in the name of the corporation which the plaintiffs represented; and it is by this suggestion that the judge who gives the opinion in *The Commercial Bank* v. *French*, evades their force. But with what regard to law does he evade it, if Marshall, C. J., be right

* Fisher *v.* Ellis, 3 Pickering, 381. † 16 Id., 381.

in *his* declaration, in *Van Ness* v. *Forrest*, that suit on such note can be brought "*only*" in the name of the person to whom it was given, and "can no more be brought in the name of the company than if it had been given to a person not a member?"

Mr. Hutchins, contra.

Mr. Justice CLIFFORD, after stating the case, delivered the opinion of the court:

1. Two questions are presented for decision, but the first is the same as that just decided in the preceding case, and for the reasons there given must be determined in the same way. Contrary to what was held in the case of *Scribner et al.* v. *Fisher*, 2 Gray, 43, we hold that the certificate of discharge in the case was no bar to the action, because the debt was due to a citizen of another State. Such was the rule laid down in *Ogden* v. *Saunders*, 12 Wheaton, 279; and we also hold that the circumstance that the contract was to be performed in the State where the discharge was obtained does not take the case out of the operation of that rule.

2. Agreed statement also shows that O. C. Hale was in fact the cashier of the Bank of Newbury at the time the defendant executed the note, but the defendant insists, as he insisted in the court below, that parol evidence was not admissible to prove that the person therein named as payee in taking the note acted as cashier and agent of the corporation. He admits that the plaintiff can prove those facts, if admissible, but denies that parol evidence is admissible for that purpose, which is the principal question on this branch of the case. Counsel very properly admit that such evidence would be admissible in suits upon ordinary simple contracts, but the argument is that a different rule prevails where the suit is upon a promissory note or bill of exchange. Suit in such cases, it is said, can only be maintained in the name of the person therein named as payee, and consequently that the plaintiff bank cannot be treated as such without explanatory evidence, and that parol evidence is not admissible to furnish any such explanation. Suppose the rule were so, still it could

not benefit the defendant in this case, because it is unconditionally admitted that O. C. Hale was in fact cashier of the plaintiff bank at the time of the making of the said note. Undeniably the note must be considered in connection with that admitted fact, and when so considered it brings the case directly within the rule laid down in the case of *Commercial Bank* v. *French*, 21 Pickering, 486, and the several cases there cited upon the same subject. In that case the court say the principle is that the promise should be understood according to the intention of the parties. If in truth it be an undertaking to the corporation whether a right or a wrong name is inserted, or whether the name of the corporation or some of its officers be used, it should be declared on and treated as a promise to the corporation, and as a general rule it may be said that where enough appears to show that the parties intended to execute the instrument in the name of the principal, the form of the words is immaterial, because as between the original parties their intention should govern. But it is not necessary to place the decision upon that ground alone, as we are all of the opinion that even if the facts set forth in the agreed statement are all to be regarded merely as an offer of proof, subject to the objections of the defendant, still the case must be decided in the same way. Regarded in that point of view, the question then is whether the evidence offered was admissible. Promise, as appears by the terms of the note, was to O. C. Hale, cashier, and the question is, whether parol evidence is admissible to show that he was cashier of the plaintiff bank, and that in taking the note he acted as the cashier and agent of the corporation. Contract of the parties shows that he was cashier, and that the promise was to him in that character. Banking corporations necessarily act by some agent, and it is a matter of common knowledge that such institutions usually have an officer known as their cashier. In general he is the officer who superintends the books and transactions of the bank under the orders of the directors.

His acts within the sphere of his duty are in behalf of the bank, and to that extent he is the agent of the corporation.

Viewed in the light of these well-known facts, it is clear that evidence may be received to show that a note given to the cashier of a bank was intended as a promise to the corporation, and that such evidence has no tendency whatever to contradict the terms of the instrument. Where a check was drawn by a person who was a cashier of an incorporated bank, and it appeared doubtful upon the face of the instrument whether it was an official or a private act, this court held, in the case of the *Mechanics' Bank* v. *The Bank of Columbia*, 5 Wheat., 326, that parol evidence was admissible to show that it was an official act. Signature of the promissor in that case had nothing appended to it to show that he had acted in an official character, and yet it was unhesitatingly held that parol evidence was admissible to show the real character of the transaction. Opinion in that case was given by Mr. Justice Johnson, and in disposing of the case he said, that it is by no means true, as was contended in argument, that the acts of agents derive their validity from professing on the face of them to have been done in the exercise of their agency. Rules of form, in certain cases, have been prescribed by law, and where that is so those rules must in general be followed, but in the diversified duties of a general agent, the liability of the principal depends upon the fact that the act was done in the exercise and within the limits of the powers delegated, and those powers, says the learned judge, are necessarily inquirable into by the court and jury. Maker of the note in that case had signed his name without any addition to indicate his agency, which makes the case a stronger one than the one under consideration. Same rule as applied to ordinary simple contracts has since that time been fully adopted by this court. Examples of the kind are to be found in the case of the *New Jersey Steam Navigation Company* v. *The Merchants' Bank*, 6 How., 381, and in the more recent case of *Ford* v. *Williams*, 21 How., 289, where the opinion was given by Mr. Justice Grier. In the latter case it is said that the contract of the agent is the contract of the principal, and he may sue or be sued thereon, though not named therein. Parol proof may be admitted to show

the real nature of the transaction, and it is there held that the admission of such proof does not contradict the instrument, but only explains the transaction.

Such evidence, says Baron Park, in *Higgins* v. *Senior*, 8 Mee. & Wels., 844, does not deny that the contract binds those whom on its face it purports to bind, but shows that it also binds another by reason that the act of the agent is the act of the principal. Argument for the defendant is, that the doctrine of those cases can have no application to the present case, because the suit is founded upon a promissory note, but the distinctions taken we think cannot be sustained under the state of facts disclosed in the agreed statement. Mr. Parsons says, if a bill or note is made payable to A. B., cashier, without any other designation, there is authority for saying that an action may be maintained upon it, either by the person therein named as payee or by the bank of which he is cashier, if the paper was actually made and received on account of the bank; and the authorities cited by the author fully sustain the position. *Fairfield* v. *Adams*, 16 Pick., 381; *Shaw* v. *Stone*, 1 Cush., 254; *Barnaby* v. *Newcombe*, 9 Cush., 46; *Wright* v. *Boyd*, 3 Barb., S. C., 523. Among the cases cited by that author to show that the suit may be maintained by the bank, is that of the *Watervliet Bank* v. *White*, 1 Den., 608, which deserves to be specially considered. Note in that case was indorsed to R. Olcott, Esq., cashier, or order, and the suit was brought in the name of the plaintiff bank, of which the indorsee was the cashier. Objection was made that the suit could not be maintained in the name of the bank, but it appearing that the indorsement was really made for the benefit of the corporation, the court overruled the objection, and gave judgment for the plaintiff. *Bayley* v. *Onondaga Ins. Co.*, 6 Hill, 476. Suggestion was made at the argument that the rule was different in Massachusetts, but we think not. On the contrary, the same rule is established there by repeated decisions, which have been followed in other States. *Eastern R. R. Co.* v. *Benedict et al.*, 5 Gray, 561; *Folger* v. *Chase*, 18 Pick., 63; *Hartford Bank* v. *Barry*, 17 Mass., 94; *Long* v. *Colburn*, 11 Mass., 97; *Swan* v. *Park*,

1 Fairf., 441; *Rutland & R. R. Co.* v. *Cole*, 24 Vt., 33. Doubt cannot arise in this case that the person named in the note was in fact the cashier of the plaintiff bank, because the fact is admitted, and it is also admitted that the plaintiff can prove that in taking the note he acted as the cashier and agent of the corporation, provided the evidence is legally admissible. Our conclusion is, that the evidence is admissible, and that the suit was properly brought in the name of the bank. The judgment of the Circuit Court is therefore affirmed with costs.

JUDGMENT ACCORDINGLY.

EX PARTE VALLANDIGHAM.

The Supreme Court of the United States has no power to review by *certiorari* the proceedings of a military commission ordered by a general officer of the United States Army, commanding a military department.

THIS case arose on the petition of Clement L. Vallandigham for a *certiorari*, to be directed to the Judge Advocate General of the Army of the United States, to send up to this court, for its review, the proceedings of a military commission, by which the said Vallandigham had been tried and sentenced to imprisonment; the facts of the case, as derived from the statement of the learned Justice (WAYNE) who delivered the opinion of the court, having been as follows:

Major-General Burnside, commanding the military department of Ohio, issued a special order, No. 135, on the 21st April, 1863, by which a military commission was appointed to meet at Cincinnati, Ohio, on the 22d of April, or as soon thereafter as practicable, for the trial of such persons as might be brought before it. There was a detail of officers to constitute it, and a judge advocate appointed.

The same general had, previously, on the 13th of April, 1863, issued a general order, No. 38, declaring, for the information of all persons concerned, that thereafter all persons