as very clear, that the indorsement is *primâ facie* evidence of having indorsed for full value, and it is incumbent on the defendant to show the real consideration, if it was an inadequate one. Usury has been stated in the argument, but it is neither alleged in the pleadings, nor proved by the testimony.

It is urged, that Mandeville & Jamesson are sureties who have received no actual value, and that equity will not charge a surety who is discharged at law. In support of this argument, the case of a joint obligation is cited.

It is true, that, in the case of a joint obligation, the court has refused to set up the bond against the representatives of a surety. But, in that case, the law had absolutely discharged them. In this case, Mandeville & Jamesson are not discharged. They are not released from the implied contract created by the indorsement. It is the legal remedy which is obstructed ; the right is unimpaired, and the original obligation is in full force.

It is, then, the opinion of this court that, without referring to the depositions to which exceptions have been taken, a right exists in the holder of a promissory *note, at least, where he cannot obtain payment at law, [*333 to sue a remote indorser in equity.

Certainly, in such a case, the defendant has a right to insist on the other indorsers being made parties, but he has not done so ; and in this case, the court does not perceive that McClenachan is a party so material in the cause, that a decree may not properly be made without him.

The decree is reversed, and the defendants directed to pay the amount of the note to the plaintiffs.

The decree of the court was as follows :—This cause came on to be heard, on the transcript of the record of the circuit court for the county of Alexandria, and was argued by counsel. On consideration whereof, the court is of opinion, that the decree of the said circuit court, dismissing the bill of the plaintiffs, is erroneous, and ought to be reversed ; and this court doth reverse the same ; and this court, proceeding to give such decree as the said circuit court ought to have given, doth decree and order, that the defendants pay to the plaintiffs the sum of $1500, that being the amount of the note in the bill mentioned, together with interest thereon from the time the same became due.

Dulany *v.* Hodgkin.

Liability of indorser.

The indorser of a promissory note, who indorses to give credit to the note, and who is counter secured by property pledged, is not liable upon the note, nor in an action for money had and received, unless the plaintiff show that the maker is insolvent, or that he has brought suit which has proved fruitless.[1]

It is not sufficient, to show that the maker of the note is out of the reach of the process of the court.

Error to the Circuit Court for the district of Columbia, sitting at Alexandria, in an action of *assumpsit*, by the indorsee of a promissory note against his immediate indorser.

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[1] See Camden *v.* Doremus, 3 How. 515.

The note was made by Wellborn, on the 1st of January 1806, for $200, payable to Hodgkin, or order, 120 days after date, negotiable at the bank of
*334] Alexandria. On the *trial, the plaintiff did not produce any evidence of a suit against the maker, nor evidence of his insolvency, but proved that the maker never was an inhabitant of the district of Columbia, but resided in Albemarle county, in the state of Virginia; whereupon, the court, upon the prayer of the defendant, instructed the jury, that it was still necessary for the plaintiff to prove, to the satisfaction of the jury, that he had brought suit upon the note against the maker, or that a suit against him would have been fruitless, before he could resort to the indorser. To which instruction the plaintiff excepted.

The plaintiff also excepted to the refusal of the court to instruct the jury, that if they should be satisfied by the evidence, that at the time the note was given, it was indorsed by the defendant, with the view of giving credit to the maker with the plaintiff, and that it was so understood; and if they should be further satisfied by the evidence, that the maker left in the hands of the defendant funds to pay the note, or otherwise counter-secured him for becoming indorser of the note, the plaintiff was entitled to recover in this action, although the maker should not be proved to have been insolvent, before the note became due.

The declaration contained two counts; one upon the note, the other for money had and received.

The case was submitted, without argument, to THE COURT, who, after inspecting the record, on the next day—

Affirmed the judgment, with costs.

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*335] *YEATON *v.* FRY.

Marine insurance.—Proceedings of foreign court of admiralty.—Depositions.—Sailing for blockaded port.

If the insurance be "against all risks, blockaded ports and Hispaniola excepted," a vessel sailing ignorantly for a blockaded port, is covered by the policy.

The exception is not of the port, but of the risk of capture, for breaking the blockade.

Copies of the proceedings in the vice-admiralty court of Jamaica are admissible in evidence, when certified under the seal of the court, by the deputy-registrar, who is certified by the judge of the court, who is certified by a notary-public.

Depositions, taken under a commission issued at the instance of the defendant, may be read in evidence by the plaintiff, although the plaintiff had not notice of the time and place of taking the same.

A vessel sailing ignorantly to a blockaded port, is not liable to capture, under the law of nations.[1]

ERROR to the Circuit Court of the district of Columbia, in an action on the case upon a policy of insurance on the brig Richard, at and from Tobago to one or more ports in the West Indies, and at and from thence to Norfolk.

The following clause was inserted in the body of the policy: "This insurance is declared to be made against all risks, blockaded ports and Hispaniola excepted." And at the foot of the policy was the following mem-

[1] The Nayade, Newb. 366; The Louisa Agnes, Blatch. Pr. Cas. 107.