

Mayo
vs.
Wilson & al.

be made without a warrant ; but in all other cases a warrant founded upon a complaint under oath was required. In the cases where an arrest was permitted without a warrant, such an arrest was no more unreasonable and no more dangerous to personal liberty, than an arrest by a warrant, because it was not permitted but in cases where there was strong evidence of guilt.

The 19th article of the bill of rights does not seem intended to restrain the legislature from authorizing arrests without warrant, but to guard against the abuse of warrants issued by magistrates. It therefore declares that the foundation of warrants shall be supported by oath, and that they shall not issue but in the cases and with the formalities by law prescribed.

On the whole, we are clearly of opinion that the act in question is not unconstitutional and that the plea is good.

EDWARD HOUGHTON *versus* LEWIS PAGE.

A party who has put his name to a negotiable security, is not a competent witness to prove that at the time he thus gave it currency it was void.

THIS was an action of assumpsit, upon a promissory note made by Lewis Page and Seth Lyman, and payable to T. M. or order, and by him endorsed to the plaintiff.

The cause was tried at the last term in this county, upon the general issue, when the defence set up was that the note was given to secure the payment of illegal interest reserved upon a loan of money ; and the only question was, whether Seth Lyman was a competent witness to prove the consideration of the note to have been usury, this question having been saved, and the cause continued to this term.

The court now said, that the rule that a party who has put his name to a negotiable instrument cannot be a witness to shew it was originally void, even in a suit between the

original parties to the instrument, was too well settled to be questioned. 3 *Mass. Rep.* 27, *Warren vs. Merry*.—4 *do.* 156, *Churchill vs. Suter*.—10 *do.* 502, *Manning vs. Wheatland*.—2 *Johnson* 165, *Colman vs. Wise*.

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SETH LEWIS *versus* HENRY FOSTER.

A. brought an action of debt against B. for a penalty given by statute, and recovered judgment. After judgment, the statute was repealed; B. then reviewed the action—held, that the repeal took away A.'s right of action—that B. was entitled to judgment upon review.

THIS was an action of debt, for a penalty founded on the 3d sec. of the statute of Dec: 16, 1796, entitled "an act regulating fees." (1 *Laws* 132.) The suit was commenced on the 30th March, 1812, and previous to the 10th June, 1813, had been tried on the general issue, and a verdict returned for the plaintiff, and judgment rendered accordingly. By a statute of June 19, 1813, § 3, (1 *Laws* 134,) the section of the law upon which the action was founded was repealed, without any saving clause. The defendant reviewed the cause, and it was again tried in this county, October term, 1815, and a verdict taken for the plaintiff, subject to the opinion of the court whether the repeal of the said section took away the plaintiff's right of action; and it was agreed that if the court should be of opinion that it did take away the plaintiff's right of action, the verdict should be set aside and a verdict entered for the defendant, otherwise judgment to be entered upon the verdict.

H. Hubbard, for the plaintiff.

Upham, for the defendant.

The opinion of the court was delivered by

RICHARDSON, C. J. We are of opinion that the plaintiff's right of action is taken away by the repeal of the law on which it was founded. It is clear, if the law had been repealed before the first judgment, the plaintiff could not have