

Otis  
vs.  
Hussey.

lation to it, it may be proper to leave it to a jury to infer a demand of the maker from a promise of the endorser to pay. But in this state, where negotiable paper has a very limited circulation, there is no ground, on which such an inference from that fact can rest ; and we are of opinion, that the rule adopted in New-York is the true one. It must be shown affirmatively, that the defendant had notice, when he made the promise, that no demand had been made, and that there had been no attempt to make one. As this was not done in this case, there must be

*Judgment on the verdict.*

JOHN M'CRILLIS vs. JOHN S. HOW.

No action can be maintained against an infant, upon his promissory note. But an action may be supported against an infant on an account, for necessaries furnished him, although he may have given his note for the amount of such account.

ASSUMPSIT upon a note, dated February 21, 1823, for \$21,92, made by the defendant and payable to the plaintiff or order. There was also a count upon an account for medicines and visits, as a physician, amounting to \$21,92.

The cause was submitted to the decision of the court, upon the following facts. The plaintiff did the services, and furnished the medicines, mentioned in the second count ; but at the time, the defendant was an infant under the age of twenty-one years. The services so rendered, and the medicines so delivered, were necessary and proper for the defendant. On the 21st February, 1823, the defendant gave to the plaintiff the note, mentioned in the first count, to balance said account ; and the plaintiff did balance the account upon his book, by giving credit for the said note. At the time the said note was given, the defendant was an infant, under the age of twenty-one years.

*W. Sawyer*, for the plaintiff.

*J. H. Woodman*, for the defendant.

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*By the court.* It has long been settled, that no action can be maintained against an infant, upon a promissory note. The reason assigned is, because, if the note was held to be valid, the infant would, when the note was in the hands of a *bona fide* endorsee, be precluded from disputing the original debt. *Chitt. on Bills* 24.—1 *D. & E.* 40, *Freeman vs. Hurst.*—3 *Caines' Rep.* 322, *Van Winkle vs. Mitcham.*—10 *John.* 33, *Swazey vs. The adm'r. of Vanderheyden.*—2 *Starkie* 36, *Ingle-dew vs. Douglas.*—*Campbell* 552, *Williamson vs. Watts.*—*Carthrew* 160, *Williams vs. Harrison et a.*

The plaintiff then cannot recover upon his first count.—But we see no objection to a judgment in his favor, on the second count. A void note, given to balance an account, is no satisfaction. 2 *Johns.* 455, *Markle vs. Hatfield.*—1 *Esp. N. P. R.* 5.—6 *D. & E.* 52, *Puckford vs. Maxwell.*—1 *N. H. R.* 281.—3 *Brod. & Bing.* 295.—7 *Taunton* 311, *Hickling vs. Hardy.*—4 *East* 147.

*Judgment for the plaintiff.*



#### TOWN OF ROCHESTER vs. TOWN OF CHESTER.

A settlement may be acquired in a town by owning real estate therein of the value of \$150 during four years, and a residence there during the same four years; and such town is liable for the support of the person thus owning the estate, and residing as aforesaid, in case he is unable to support himself; although he may not have been taxed for said estate.

The opinion of witnesses is not competent evidence, except on questions of science and trade, and others of the same kind.

THIS was an action of assumpsit for the support of *Elizabeth Smith*, a pauper, alleged to have her settlement in *Chester*.

The cause was tried here, September term, 1824, on the general issue, and a verdict found for the defendant.

The defence was, that the pauper had acquired a settlement in *Rochester*, by owning real estate in that town, and residing therein four years; and the court instructed the jury, that if they believed, from the evidence, that the pauper had been the owner of real estate in *Rochester*, of the