

SCHOFF v. LAITHE.

58a	503
87	528
58	503
72	252

A verdict is not set aside on the ground that the prevailing party was allowed to open and close, unless it appears that injustice was done.

FOREIGN ATTACHMENT. Issue between the plaintiff and a claimant of a fund in the hands of the trustee. Two questions of fact were submitted to the jury, and answered by them in the negative,—first, whether the defendant owed the claimant a certain debt; and, second, whether the defendant had assigned the fund to the claimant, before it was attached, for the purpose of making a payment. The court allowed the plaintiff to open and close, on condition that he take the burden of proof; and the claimant excepted.

E. Fletcher, for the claimant, argued that the affirmative and the burden of proof were upon the claimant, and he had the right to open and close, and could not be required to give up this right in exchange for the plaintiff's assumption of the burden.

W. & H. Heywood and *Ray*, for the plaintiff.

STANLEY, J. A verdict is not set aside on the ground that the prevailing party was allowed to open and close, unless it is shown that the other party has suffered actual injustice. *Hardy v. Merrill*, 56 N. H. 227, 234; *Day v. Woodworth*, 13 How. 363, 370; *Doe v. Brayne*, 5 M. G. & S. 655; *Bird v. Higginson*, 2 A. & E. 177.

Judgment on the verdict.

DOE, C. J., did not sit.

WOODWARD v. ROBERTS.

The provision of the U. S. St. of 1866, c. 184, s. 9, that no unstamped instrument shall be admitted in evidence in any court until legally stamped, applies only to the courts of the United States.

ASSUMPSIT, on the defendant's note for \$150, dated January, 1868, payable to the plaintiff. The defendant excepted to the admission of the note in evidence because it was not stamped. Verdict for the plaintiff. Motion for a new trial.

Ray, Drew & Jordan, for the plaintiff.

Benton and *Fletcher*, for the defendant.

BINGHAM, J. The note was admissible in evidence. The provision of the U. S. St. of 1866, c. 184, s. 9, that no instrument, not stamped according to law, shall be used or admitted in evidence in any court until legally stamped, applies to the federal and not to the state courts. *Green v. Holway*, 101 Mass. 243, 249; *Carpenter v. Snelling*, 97 Mass. 452.

Judgment on the verdict.

DOE, C. J., did not sit.

CURTIS, Adm'r, v. HORN.

A promissory note, payable "on or before the first day of May next," is negotiable.

ASSUMPSIT. Plea, the general issue. Facts found by a referee. The suit is upon the following note: "For value received I promise to pay Charles Richey, or bearer, thirty dollars on or before the first day of May next, with interest annually.

[Signed]

"WILLIAM HORN."

The note was dated, given for value, and indorsed to the plaintiff's intestate, before it was due.

Ray, Drew & Jordan, for the plaintiff.

Fletcher & Fletcher, for the defendant.

BINGHAM, J. It is said that the instrument sued being payable on or before a day named, the day of payment is uncertain, and that it is not a negotiable note. *Way v. Smith*, 111 Mass. 523; *Stults v. Silva*, 119 Mass. 137; *Hubbard v. Mosely*, 11 Gray 170; *Alexander v. Thomas*, 16 Ad. & E. 333. The St. 3 & 4 Ann, c. 9, does not provide that a promissory note must state a time of payment, therefore it was held that if there was a certain promise to pay, at a time that would certainly occur, though uncertain when, it was within the statute in this particular. *Coleham v. Cooke*, Willes's Rep. 393—S. C., Strange 1217.

It is now the common law, that where the payment is made to depend upon an event that is certain to come, and uncertain only in regard to the time when it will take place, the note or bill is negotiable. Edwards on Bills and Notes 142; Story on Prom. Notes, s. 27; *Wheatley v. Williams*, 1 M. & W. 533; *Andrews v. Franklin*, 1 Strange 24; *Carlton v. Kenealy*, 12 M. & W. 139; *Ernst v. Steckman*, 74 Penn. St. 13—S. C., 15 Am. 542; *Walker v. Woollen*, 54 Ind. 164—S. C., 23 Am. 639; *Mattison v. Marks*, 31 Mich. 421—S. C., 18