

pended by the mortgagee in repairs had not been adjusted. The amount of rent for which the mortgagee ought, under the circumstances, to account, was not ascertained. It is clear then that a writ of entry can not be maintained in such a case, and the verdict must be set aside, and

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A new trial granted.

A. BAILEY *versus* F. SIMONDS.

When a note is made payable in goods, at a particular place, on demand, the maker is bound to have the goods always ready at the place.

A note, payable "in leather such as suits," is payable in such leather as will suit the payee.

ASSUMPSIT. It was alleged, in the declaration, that the defendant, on 31st January, 1828, for value received, promised to pay the plaintiff, \$87,50, in good leather, such as would suit the plaintiff, on demand, at Mr Slade's tan-yard, in Walpole, with interest.

At the trial, at April term, 1833, upon the general issue, the plaintiff produced a note, signed by the defendant, but it was payable "in good leather such as suits." On the part of the defendant it was objected that this was a fatal variance, but the court overruled the objection.

The plaintiff proved, that, on the 16th February, 1828, he presented the note at Slade's tan yard, in Walpole, and demanded payment in heavy sole leather. But there was no such leather there. It was, however, proved, on the part of the defendant, that immediately after the 16th February, 1828, there was, at the place, ready for the plaintiff, enough heavy sole leather to pay the note.

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The court instructed the jury, that, if the plaintiff presented the note on the 16th February, 1828, and the leather he demanded was not then ready, it was a breach of the contract, and the plaintiff was entitled to a verdict.

The jury found for the plaintiff, and the defendant moved for a new trial on the above case.

Chamberlain, for the plaintiff.

Hubbard, for the defendant.

*By the court.** The contract is stated in the declaration, not in the words of the note, but according to their legal effect. The note is, without doubt, payable in such leather as would suit the plaintiff.

It is settled that when a note is made payable in goods at a particular place, on demand, the maker is bound to have the goods always ready. 16 Mass. Rep. 453, *Mason v. Briggs*; 5 Cowen, 518.

Judgment on the verdict.

THE TOWN OF STODDARD *versus* A. C. COCKRAN,
AND OTHERS.

In debt brought by a town, on a bond which was described in the declaration as a bond, payable as the town should, by legal vote, direct, it was held to be a good cause for abating the writ, that the bond was described in the summons, left with the defendant, for his appearance, as a bond payable on demand.

DEBT upon a bond, in the sum of \$10,000, which was described in the declaration as payable to the town "as said town should, by legal vote, direct."

The defendants cravedoyer of the writ, and of the sheriff's return, by which it appeared that he attached property of the defendants and left a summons, with

* PARKER, J. having been of counsel, did not sit.