

limits." The district is subjected to no liability respecting its highways "distinct" from its liability as a part of the town. It is not liable to indictment for neglecting to make new highways lawfully established, for neglecting to keep its highways "in good repair, suitable for the travel thereon" (Gen. Laws, *c.* 74, *s.* 1), or to travellers for damages happening to them by reason of defects therein. Gen. Laws, *c.* 75, *s.* 1. To these burdens the town alone is subjected. Legislation imposing upon one body the sole duty of constructing and keeping in repair highways, and subjecting another body to both criminal and civil liability for defects therein, which it has no power to prevent, would be novel as well as inequitable. There are no words in the statutes directly indicating, or from which it can be inferred, that the legislature intended such a result.

Exceptions overruled.

BLODGETT, J., did not sit: the others concurred.

McFETRICH *v.* WOODROW & *a.*

A person not the payee of a promissory note, who writes his name on the back before it is negotiated, is liable as maker, not as endorser, although his signature was for the accommodation of the payee, and the payee, at the time of negotiating it, endorses it above such signature.

ASSUMPSIT, on a promissory note of the defendant Woodrow, endorsed by the defendant Jameson, dated October 27, 1886, and payable to the order of E. H. Williams, four months after date. Facts found by the court.

The note is an accommodation note made by Woodrow, and endorsed by Jameson for the benefit of Williams, at his request. January 1, 1887, the plaintiff took the note of Williams in good faith, for an adequate consideration, and without notice that it was an accommodation note. When the note was exhibited to the plaintiff, Jameson's name was on it; and at the time of its delivery to the plaintiff, Williams endorsed his name above that of Jameson. Jameson was not notified of the non-payment of the note until June, 1889.

Thomas F. Johnson and Ladd & Fletcher, for the plaintiff.

Jason H. Dudley and Ossian Ray, for the defendant Jameson.

ALLEN, J. The note was not a valid contract until it was negotiated and delivered to the plaintiff for value. Jameson was not entitled to notice of non-payment. He was liable to the plaintiff,

not as endorser, but as maker. *Martin v. Boyd*, 11 N. H. 385; *Benton v. Willard*, 17 N. H. 593; *Carrier v. Fellows*, 27 N. H. 366; *Phillips v. Johnson*, 64 N. H. 393, 400. On the facts found, it is immaterial that, for the purpose of giving the plaintiff title to the note, Williams endorsed it above the name of Jameson.

Judgment for the plaintiffs.

SMITH, J., did not sit: the others concurred.

JORDAN v. WALLACE.

The affidavits of jurors that they were not influenced in their verdict by unwarranted remarks in the argument of counsel for the party in whose favor the verdict was rendered, cannot be considered upon the question whether the effect of the objectionable remarks was wholly removed by a retraction of counsel or the charge of the court. Unless the party in fault, after verdict in his favor, obtain such a finding from the presiding justice, the verdict will be set aside.

ASSUMPSIT, for damages for breach of contract to cut and yard timber. The defence was that the contract was procured by false representations of the plaintiff, calculated and intended and having the effect to deceive the defendant, and render his examination of the situation and quantity of the timber less complete, and therefore the defendant rightfully rescinded it. Verdict for the defendant.

The defendant's counsel, in his argument to the jury, said of the plaintiff,—“I don't believe that he ever lived an honest hour in his life, when he was not either plotting and planning to beat somebody individually, or to go into bankruptcy and beat everybody collectively.” To this the plaintiff objected, and the court stopped the counsel, stating that his remarks were improper, and not authorized by any evidence in the case, and told the jury to disregard them. Thereupon the defendant's counsel said he withdrew the objectionable remarks, and asked the jury not to regard them. The plaintiff insisted on his exception, claiming that the mischief was not cured by the apology of the counsel. In the instructions to the jury the court again reminded them that they should regard the evidence only in making up their verdict, and that the objectionable remarks of counsel should have no effect. The plaintiff moved to set the verdict aside because of the remarks excepted to. Thereupon the defendant produced the affidavits of all the jurors to the effect that the remarks of counsel objected to had no influence whatever upon their minds in determining the

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68	50

67	175
69	419

67	175
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