

Hartford,
June,
1821.
Benjamin and
Moore
v.
Hathaway.

proper corrective, that is, an investigation of the facts by a jury, who, with sufficient vigilance, will enquire into the motives and tendencies of every transaction of this nature. On the other hand, the convenience of the creditors is not to be entirely disregarded. The land and buildings, it may fairly be presumed, were jointly levied on; and were separately appraised, that the creditor might ascertain, whether, with the buildings, he could appropriate a sufficiency of land to render them desirable and useful. If, for a motive of this description, or any other, having in view an object perfectly fair and entirely reasonable, there is a separate appraisal of property levied on, I cannot say, that it is incompatible with private justice, or public convenience.

The other judges were of the same opinion.

New trial not to be granted. (a)

(a) This case is cited or commented upon in *Bill v. Pratt*, 5 Conn. R. 127. *Cook v. Swan*, 5 Conn. R. 48. *Mills v. Goodsell*, 5 Conn. R. 476. *Northrop v. Hatch*, 6 Conn. R. 364. *Kellogg v. Wadhams*, 9 Conn. R. 206. 209. *Marcy v. Kinney*, 9 Conn. R. 397. 399.

FOQUET against HOADLEY.

Treasury notes are not money or cash; nor will evidence of one support an allegation regarding the other.

THIS was an action on a promissory note, dated at *Plattsburgh*, the 9th of *June*, 1815, in and by which, the defendant promised the plaintiff, to pay to him, for value received, the sum of 129 dollars, and 14 cents, on demand.

The defendant pleaded, 1st, That on the 1st of *July*, 1815, he inclosed in a letter, directed to the plaintiff at *Plattsburgh*, in the state of *New-York*, and deposited in the post-office at *New-London*, in this state, three fifty dollar treasury notes, of the value of 150 dollars, which, through the regular course of the mail, the plaintiff, on the 15th of the same month, received and accepted of the defendant, in full satisfaction of the note: 2dly, That at *Plattsburg*, on the 15th of *July*, 1815, it was accorded and agreed, by and between the plaintiff and defendant, that the defendant should transmit to the plaintiff, by letter, through the mail, the sum due on the note; and the defendant did, immediately afterwards, remit to the plaintiff, at *Plattsburg*, cash or money, in the ordinary course

of the mail, to the amount of the note, which the plaintiff received in full payment thereof: 3dly, That on the 1st day of *July*, 1815, the defendant, at the instance and request of the plaintiff, deposited in the post-office at *New-London*, to be forwarded by mail, three fifty dollar treasury notes, of the value of 150 dollars, enclosed in a letter, directed to the plaintiff, at *Plattsburgh*, the place of his abode; which the plaintiff received and accepted in full satisfaction of the note: 4thly, That the defendant, by direction of the plaintiff, on the 1st of *July*, 1815, deposited in the mail, cash or money sufficient to pay the note, viz. 150 dollars, enclosed in a letter, directed to the plaintiff at *Plattsburgh*, to be forwarded according to its direction; which the plaintiff received in full payment of the note.

These pleas the plaintiff traversed; on which, issue was joined; and the cause was tried at *Litchfield*, *August* term, 1820, before *Brainard*, J.

On the trial, the defendant, to support the first and third pleas, offered in evidence, the deposition of *Everitt Howard*, which, among other things, stated, that in the month of *June*, 1815, being a boarder in the plaintiff's family, at *Plattsburgh*, he was present at a settlement between the plaintiff and defendant; That the defendant, being deficient in funds, proposed remitting the balance due, by letter, soon, if there was no danger; that the plaintiff answered, there would be no danger, and, as he was in very great want of cash, he wished the plaintiff to convey it immediately, by mail; that the defendant enquired, how he should receive his note, to which the plaintiff replied, that it should be endorsed satisfied, and delivered to a Lieut. *Fowler*, who was present, for the defendant. To the admission of this evidence, the plaintiff objected, and the judge rejected it.

In support of the second and fourth pleas, the defendant offered *Elijah Butts*, to prove, that on the 1st of *July*, 1815, the defendant deposited in the post-office in *New-London*, three fifty dollar treasury notes, in a letter directed to the plaintiff at *Plattsburgh*, to be conveyed to him by mail; in which letter the plaintiff was requested to take therefrom, the sum of 129 dollars, 14 cents, and enclose the note satisfied, and to pay over the balance to sundry persons specified. To the admission of this testimony, the plaintiff objected; and the judge decided that it was inadmissible.

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