

S. & G. TURNER vs. GREENWOOD.

Protest of an inland bill for non-acceptance or non-payment, is not necessary. Where acceptance is refused, the bill need not be presented for payment.

Appeal from the Circuit Court of Benton County.

ASSUMPSIT, by S. & G. Turner against Greenwood, upon an inland bill of exchange, determined in the Benton circuit court, at the May Term, 1847, before the Hon. W. W. FLOYD, judge.

The declaration alleged that on the sixth day of September, 1844, Greenwood drew a bill on Pelham in favor of plaintiffs at sixty days. That on the 28th November, 1844, the bill was presented for acceptance, and not accepted, of which Greenwood was duly notified.

Defendant demurred to the declaration on the grounds, 1st.

that there was no averment that the bill was protested for non-acceptance or non-payment: 2d. the presentment of the bill for payment, and non-payment were not averred.

The court sustained the demurrer, and plaintiffs appealed.

BERTRAND & W. WALKER, for the appellants. The only question raised by the record is, whether the court below erred in sustaining the demurrer to the declaration.

The ground of demurrer assumed is, that the appellants in their declaration do not allege that the bill of exchange sued on was protested for non-acceptance or non-payment. The bill sued on, is an *inland bill*, and protest was not therefore necessary to hold the drawer liable to the appellants. *Story on Bills, pages 556 and 558, sections 465 and 468.*

ENGLISH, contra. The law merchant may not require protest of *inland bills*; but our statute seems to contemplate protest of all bills. *Rev. Stat. Tit. "Bills of Exchange."*

OLDHAM, J. The bill upon which this action is founded is an inland bill. Such bills need not, for non-acceptance or non-payment, be protested by the holder to charge the drawer. *Story on Bills, 556-558.* The *Revised Statutes* of this State does not charge the law merchant upon this point.

The drawee refused to accept the bill upon its presentment for acceptance, and therefore no presentment or demand of payment was necessary. *Story on Bills, 428.* The court erred in sustaining the demurrer to the declaration, for which the judgment must be reversed.