

## SCOTT vs. STATE BANK.

A plea that a bond was delivered to the *obligee* on conditions not performed, is not a good plea that it was delivered as an escrow. This principle is also applicable to notes.

If delivered to a third person it is not binding until the conditions are performed, but otherwise if delivered to the payee.

A delivery to an agent is a delivery to the principal.

Therefore, a plea that defendant signed the note sued on and delivered it to an agent of the plaintiff (a bank) on the express agreement that it was not to be discounted until it was signed by a third person, as co-security, whose name was in the body of the note, and that the bank discounted the note without obtaining the signature of such third person, is bad on demurrer.

*Writ of Error to the Crawford Circuit Court.*

DEBT, by the Bank of the State of Arkansas against Scott, on a promissory note, determined in the Crawford circuit court, August Term, 1847, before the Hon W. W. FLOYD, judge.

The defendant filed a special plea as follows:

“And now at this term comes the defendant, and craves oyer of the writing sued on in this case, and it is read to him in words and figures following, *to wit*:

“\$735.

FAYETTEVILLE, 3d March, 1842.

Six months after date we, John Dillard as principal, and J. A. Scott and W. Duval, as securities, jointly and severally promise to pay to the Bank of the State of Arkansas, or order, the sum of seven hundred and thirty-five dollars, payable and negotiable at the Branch of said Bank at Fayetteville, for value received: Witness our hands.

JNO. DILLARD,

J. A. SCOTT.’

“And therefore, the said defendant says *actio. non*, because he says that upon the face of said promissory note it is positively shown that the said John Dillard, as principal, and the said defendant and Washington Duval, as securities, of the said John Dillard, promised to pay to the said plaintiff, the said sum of money in plaintiff’s declaration mentioned; and that said note was then and there so filled up, presented to the said defendant by an agent of the Bank aforesaid, who then and there told said defendant that the said Duval was to sign said note as security, and the said defendant then and there signed the same with the express understanding and agreement with the said Bank, by its agent, that the said Duval should also sign said note as a security; and that the same then, and not until then, should be used by the said Bank and discounted as a payment or renewal of another certain note then due and owing by the said Dillard to said Bank; and said defendant avers that said agent of said Bank fraudulently afterwards delivered said note, so given on

oyer, to said Bank without first obtaining the signature of said Duval, and the agents and directors of said Bank well knowing the premises, contrary to their prescribed rules and customs, fraudulently used said note in payment or renewal of said Dillard's note for the like amount; and this defendant is ready to verify," &c.

PASCHAL & OGDEN.

The court sustained a demurrer to the plea, and defendant brought error.

PASCHAL & OGDEN, for plaintiff, to show that Scott was not liable on the note, cited *Chipman on Contracts*, 23 (1 Ed.). *Pauling et al. vs. U. S.*, 4 *Cranch's R.* 219. Same case, 2 *Pet. Cond. R.* 93.

LINCOLN, contra.

OLDHAM, J. The facts set up by the plea do not amount to a good defence. The note was signed and delivered to the agent of the Bank with the understanding that Duval should also sign it. A delivery to the agent of the bank as such was a delivery to the bank. Had the note been under seal, the facts pleaded would not amount to a good plea that it was delivered as an escrow. A plea that a bond was delivered to the obligee, on conditions not performed, is not a good plea that it was delivered as an escrow. *Reed vs. Latham*, 1 *Ark. R.* 66. The principle is also applicable to a promissory note. *Badcock vs. Steadman*, 1 *Root* 87. If delivered to a third person it is not binding, until the condition upon which it was delivered be performed, but if directly to the promisee, it is binding from delivery, whether the condition be performed or not. The court correctly sustained the demurrer to the plea, and the judgment is therefore affirmed.