

The plaintiffs contend that the document is a negotiable promissory note, and that the case is not governed by the decision in *Dominion Bank v. Wiggins*, 21 A.R. 275.

In *Dominion Bank v. Wiggins*, the Court held that the following words, "The title and right to the possession of the property for which this note is given shall remain in Haggart Bros. Manufacturing Co. until this note is paid," added to the note there sued on, had the effect of rendering the document unnegotiable as a promissory note. The Court points out that, although the consideration for the note is the sale of the property, the maker has neither the title nor the right of possession thereto until the note is paid; and, unless the payee was in a position to deliver the possession of and title to the machine sold when the note matured, the purchaser was not compellable to pay, "and the payment to be made is therefore not an absolute unconditional payment at all events, such as is required to constitute a good promissory note."

In the present case, by the terms of the note, the defendant has the possession of the implement, and it is argued that, he having the possession and the right of possession, the title would pass to him automatically upon payment of the note, and that the hardship to which the maker is exposed in the *Wiggins* case could not happen here. Undoubtedly the Court laid considerable stress upon the fact that the defendant in the *Wiggins* case did not get either the title or possession, and that much of the reasoning proceeds upon that basis; and, if the absence of both title and right of possession was the determining factor, that is decisive as far as this case is concerned. I am, however, of the opinion that the right to possession of the machine for which the note was given remaining in the vendors, was not necessary to the decision in *Dominion Bank v. Wiggins*.

It is to be noted that, although the defendant in this case was "to have possession and use of the implement," such possession was not an absolute one, but might be revoked upon his failing to furnish security or on a sale of his property. In this respect the note is very like that in *Third National Bank v. Armstrong*, 25 Minn. 530, where the title to the implement for which the note was given remained in the vendors, and they had "the right to take possession of said property wherever it may be found, at any time they may deem themselves insecure, even before the maturity of this note." The judgment was on an appeal from the trial Judge; and, because it disposes, very briefly, of the questions raised in the plaintiffs' argument, will stand quoting in full:—