

SELECTIONS.

but denied to such thing as annuities payable in the future. The latter are of as substantial a character as the former, or rather more substantial, especially if secured by a trust fund. The answer is that an annuity is a piece of property, and not a debt. A debt only arises out of it when the person who has to pay it might be sued for an instalment. In the case of a trustee this only happens when he has the money in his hands. It may be that the process of attachment ought to be applicable to property of this character, but as yet the legislature has not so applied it. It would be easy to create a sort of compulsory charge on annuities, and money paid periodically. Whether it would be expedient is another question. At present the right to attach is simply and clearly confined to debts, and although the phrase "accruing debts" is capable of meaning an embryo debt, yet such an interpretation would lead to great uncertainty. There would be difficulty in drawing the line reasonably, and a very distant approach to a debt such as the negotiation for a contract might be considered as within the phrase. So far as the attachment of debts is concerned, proper effect has, we think, been given to the law by the decision in question. If property not of the tangible kind which can be reached by a *fi. fa.* is to be dealt with by any similar proceeding, another and separate definition of the thing to be attached is necessary.—*Law Journal.*

THE vexed question for a provision for attorney's fees in a note was decided in favor of the negotiability of such a note, in *Adams v. Addington*, United States Circuit, Northern District of Texas, January, 1883, 16 Feb. Rep. 89, Pardee, J. "As shown by the note of Mr. Adelbert Hamilton to the case of *Merchants' Nat. Bank v. Sevier*, 14 Feb. Rep. 662, the weight of authority is in favor of the negotiability of instruments containing stipulations similar to those contained in the one sued on. And, on principle, why should such instruments not be negotiable? The amount to be paid at maturity is fixed and certain. As to what amount is to be paid in case of dishonor, and after maturity, there may be uncertainty, depending upon contingencies, Is not the same true of every promissory note negotiable by the law merchant? The simplest one in form will carry with it an obligation to pay protest fees and interest in case of dishonor. The protest

fees are contingent upon protest being made, and upon the number of indorsers notified. The interest payable is contingent upon time. Bills of exchange, which, in the matter of certainty of amount, stand upon the precise footing of promissory notes, carry with them an implied contract in case of dishonor to pay notarial expenses and interest (and in case of foreign bills payable abroad), re-exchange and expenses besides. That makers of promissory notes may make stipulations affecting their liability and the remedies to be taken against them in case of dishonor, and after maturity, without destroying the negotiable character of the notes, seems to be well settled. A note in the usual form to which is added, 'Waiving right of appeal and of all valuation and exemption law,' is negotiable. *Zimmerman v. Anderson*, 57 Penn. St. 421; *Wollen v. Ulrich*, 64 Ind. 120. So is one with a power of attorney to confess judgment attached. *Osborn v. Hawley*, 19 Ohio, 130; *Kirk Cushman v. Welsh*, 19 Ohio St. 536; *Kirk v. Ins. Co.*, 39 Wis. 138; S. C. 20 Am. Rep. 39. So is one directing the appropriation of the proceeds of the note. *Treat v. Cooper*, 22 Me. 203. Likewise a stipulation may be made that no interest shall accrue prior to a certain date. *Helmer v. Krolick*, 36 Mich. 371. Or, if not paid at maturity, the note shall bear interest at an increased rate. *Houghton v. Francis*, 29 Ill. 244; *Towne v. Rice*, 122 Mass. 67; *Parker v. Plymell*, 23 Kans. 402. * * * In all the foregoing instances of notes and bills of exchange, the amount to be paid at maturity was certain; the collateral or additional contract, embodied in the instrument or supplied by the law, relating solely to the amount promised to be paid in the contingency of dishonor, and expenses thereby incurred. Now if negotiable instruments may carry with them, either as 'ballast' or 'baggage,' a collateral contract in case of dishonor to pay reduced or increased interest, to waive delays and homestead exemptions, to confess judgment, to appropriate the proceeds, to sell collateral security, to pay (in cases of bills) re-exchange and expenses, all without losing their negotiable character, there is no principle founded in reason which shall declare a promissory note to be not negotiable because it contains a collateral contract that in case of dishonor the maker shall pay the expenses directly resulting from his own miscarriage or default. It seems to me, both on principle and authority, we properly ruled on the trial of this case.