

Case No. 535. ARMAT v. UNION BANK OF GEORGE-TOWN.
[2 Cranch, C. C. 180.]¹

Circuit Court, District of Columbia.

June Term, 1819.

LOST INSTRUMENTS—ONE-HALF OF BANK NOTE LOST—RECOVERY.

If the owner of a bank-note lose one half of it, he may recover the amount of the whole note, in an action against the bank which issued it, the plaintiff having offered security to indemnify the bank against the claim of any other person upon the lost half.

[See *Bullett v. Bank of Pennsylvania*, Case No. 2,125.]

At law. This cause was submitted to the court upon the following case stated, by Mr. Key, for the plaintiff, and Mr. Jones, for the defendant: A note for \$100, duly issued and put in circulation as cash by the Union Bank of Georgetown, was cut in two by one T. C. Amory and one of the said halves remitted in payment by him to the plaintiff by mail from Gloucester Court-House to Baltimore; but never arrived by mail, nor in any other manner came to the hands of the plaintiff; but has ever since the said remittance, been missing, and never since heard of, and is lost to the plaintiff. That said Amory afterwards, and before the institution of this suit, delivered the remaining half to the plaintiff, who presented it to the bank and demanded payment of the whole sum of \$100; at the same time offering to prove to the satisfaction of the said bank, the miscarriage and loss of the other half, and to indemnify them by security against any loss from the reappearance and demand of the half so lost. The said half so presented is hereto annexed, and it is agreed that the said note, before the same was cut as aforesaid, was in the form hereunto annexed; and was one of a considerable number of one hundred dollar notes issued and put in circulation by the said bank, and not otherwise distinguishable from the said note, than by a certain number and letter on the left of each of the said notes respectively. The said defendants offered to pay to the plaintiff, on presentation of the said half, one half of the amount of the said original note, that is to say, \$50; but refused to pay the other half. It is agreed to be the custom of the said bank, and of banks generally, to pay one half of the original sum due upon the whole note, upon presenting one half of a cut note, without accounting at all for the other half. The point now submitted is, whether the said bank is not bound to pay the whole amount of the original note, upon due proof of the loss of one half of the note, and an offer to indemnify as aforesaid.

Mr. Key, for plaintiff. If the whole note had been lost, and the plaintiff had offered indemnity, he would have been entitled to recover, as upon a lost note. A man does not lose his debt, by losing the best evidence of it.

Mr. Jones, for defendant. The \$100 notes are only distinguishable from each other by a number on the left half. These notes pass as cash. They are payable to bearer. Trover will not lie for them. If stolen and presented by a bona fide holder, the bank is liable.

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Pierson v. Hutchinson, 2 Camp. 211; Grant v. Vaughan, 3 Burrows, 1516; Peacock v. Rhodes, 2 Doug. 633. The custom to pay half was generally known, and an agreement may be presumed to that effect. The innocent holder of the other half, may, perhaps, show as good a right to recover upon it as the present plaintiff. It was payable to bearer on demand.

THE COURT (nem. con.) said: This is to be considered as a note destroyed. The plaintiff is admitted to have been owner of the whole note. The holder of the other half cannot aver the same fact, and therefore can never recover upon it. Judgment for the plaintiff.

¹ [Reported by Hon. William Cranch, Chief Judge.]