

Case No. 4,654. FARMERS' & MECHANICS' BANK v. GAITHER.
[3 Cranch, C. C. 347.]¹

Circuit Court, District of Columbia.

Dec. Term, 1828.²

ACTION BY TRUSTEE—JUDGMENT OF NON-PROS.—CONSENT OF CESTUI QUE TRUST.

If the plaintiff be a trustee, the court will not permit him to become non-pros without the consent of the cestui que trust, if the latter will give security to indemnify the plaintiff from costs.

[This was an action by the Farmers' & Mechanics' Bank of Georgetown against George R. Gaither on a promissory note made by defendant to W. W. Corcoran & Co.]

C. Cox, for plaintiffs, moved to strike off this suit; that is, to become non-pros.

Mr. Marbury, contra. The notes of Gaither had been indorsed to the plaintiffs by W. W. Corcoran & Co., as collateral security for their debt to the plaintiffs, and, having paid their debt to the plaintiffs, W. W. C. & Co. directed the plaintiffs to pay over the proceeds, when collected, to Thomas Corcoran; which they agreed to do. Thomas Corcoran, therefore, has an interest in the proceeds of this suit, as security for his responsibility for W. W. Corcoran & Co. The plaintiffs have no interest in the suit, except as to the costs.

Mr. Kay, contra.

THE COURT (MORSELL, Circuit Judge, not sitting in the cause) refused to permit the plaintiffs to strike off the suit, upon Mr. Thomas Corcoran's giving security to indemnify the plaintiffs against the costs.

[NOTE. The cause afterwards proceeded to trial, and judgment was entered for plaintiffs, whereupon the defendant Gaither took the case to the supreme court on writ of error. The judgment of the circuit court was reversed, and the cause remanded for a new trial. Gaither v. Farmers' & Mechanics' Bank, 1 Pet. (26 U. S.) 37. For the new trial, see Case No. 4,655.]

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

² [Reversed in 1 Pet. (26 U. S.) 37.]