

Case No. 4,655. FARMERS' & MECHANICS' BANK v. GAITHER.
[3 Cranch, C. C. 440.]¹

Circuit Court, District of Columbia.

May Term, 1829.

USURY—WHAT CONSTITUTES.

If a bank discount a note for the indorser at six per cent., and give post-notes, having time

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to run and not bearing interest, the transaction is usurious, and the bank cannot recover upon the note through such an usurious indorsement, although the note itself, when given, was free from usury.

This cause now came before this court upon the venire de novo awarded, in pursuance of the mandate of the supreme court, at January term, 1828 (see [Gaither v. Farmers' & Mechanics' Bank] 1 Pet [26 U. S.] 37); and, in the course of the trial (Morsell, J., not sitting), this court, at the prayer of Mr. Key, for the defendant, instructed the jury, in effect, that if they should be satisfied, by the evidence, that the defendant's note, upon which this suit was brought, was indorsed to the plaintiffs by W. W. Corcoran & Co., as collateral security for their note, discounted by the plaintiffs, at the usual rate of six per cent. per annum, under an agreement that they should take therefor post-notes, not bearing interest, and having time to run, without any rebate upon such post-notes for such time; then the plaintiff is not entitled to recover in this action.

Whereupon Mr. Coxe, for the plaintiffs, prayed the court to instruct the jury, that if they should be satisfied by the evidence, that on the 30th of June, 1823, Thomas Corcoran substituted his notes for those of W. W. Corcoran & Co., and they were no longer the debtors of the bank, and that this suit was originally brought at the instance and for the sole use of Thomas Corcoran, then the circumstances stated in the foregoing opinion of the Court are not sufficient to prevent the plaintiffs from recovering in this cause for the use of the said Thomas Corcoran. Mr. Coxe cited *Parr v. Eliason*, 1 East, 92.

But THE COURT refused to give such instruction.

Mr. Key cited *Chit Bills*, 104.

THE COURT also rejected the set-off of the notes of W. W. Corcoran & Co., which were offered under the circumstances stated in this case before the supreme court 1 Pet [26 U. S.] 37.

Verdict for the defendant. Bills of exceptions were taken, but no new writ of error prosecuted.

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