

Case No. 4,662. FARMERS' BANK OF VIRGINIA v. OWEN.
[5 Cranch, C. C. 504.]¹

Circuit Court, District of Columbia.

Nov. Term, 1838.

BANKS—INDORSEMENT OF BILLS FOR COLLECTION—COLLECTING BANK AS AGENT OF PAYEE.

If the payee of an inland bill of exchange indorse and deliver it to a bank to be transmitted to another bank for collection, and it be duly so transmitted, the bank to whom it is thus transmitted becomes the agent of the payee, and answerable to him alone for any breach of its duty in relation to the bill.

Assumpsit against the payee, indorser of an inland bill drawn at Hampton Roads, January 8, 1837, by A. H. Gillespie on J. W. Reckless, Perth Amboy, New Jersey, payable to the order of the defendant Edward Owen, at six months after sight for \$161.88, and indorsed "Edward Owen, by his agent and attorney, P. P. Mayo." Upon the trial, evidence was given to prove the following facts: That the bill drawn and indorsed as above stated, was by Mr. Mayo, the defendant's agent delivered to the plaintiffs to be forwarded to some eastern or northern bank for collection. The plaintiffs sent it to the Union Bank of New York for that purpose, who transmitted it to a bank at Perth Amboy. The cashier of the Union Bank, supposing, by mistake, that the bill was payable six months after date, instead of

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“sight,” in which case it would have been payable on the 11th of July, and not hearing anything to the contrary, on the 9th of August gave notice to the plaintiffs that the draft had been paid, and passed to their credit, whereupon the plaintiffs remitted the net proceeds of the bill to the defendant by a draft on a bank in Baltimore. It afterwards appeared that the bill was not payable until the 14th–17th of August, when it was duly protested.

Z. C. Lee, for the defendant, contended that the Union Bank of New York was the agent of the plaintiffs, and if, by their mistake, the plaintiffs had paid the money to the defendant, they must look to the Union Bank and not to the defendant, and moved the court to instruct the jury to that effect; but.

THE COURT (THRUSTON, Circuit Judge, absent,) overruled the motion, and, at the prayer of R. S. Coxe, for the plaintiffs, instructed the jury, that if they shall believe, from the evidence aforesaid, that the plaintiffs received the draft in question from the agent of the defendant, for the purpose of being transmitted to the north for collection, and the said plaintiffs did, in due time, transmit the draft for collection, the bank in New York, to whom the draft was thus transmitted, became the agent of the defendant, and is responsible to him alone for breach of its duty in relation to said draft, and such breach of duty constitutes no defence to this action.

Verdict for plaintiffs.

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