

NICHOLLS V. FEARSON ET AL.

{2 Cranch, C. C. 703.}¹

Circuit Court, District of Columbia. May Term, 1826.²

USURY—WHAT IS.

If a promissory note, indorsed by the defendants, without an understanding that they were not to be responsible upon their indorsement, be discounted by the plaintiff at a rate exceeding the lawful rate of interest for the time the note had to run, the transaction is usurious.

Assumpsit, against the indorsers of W. Stewart's note for \$101, at sixty days.

The evidence was that the defendants, having received this note in a fair transaction, took it to the plaintiff's shop, with their own indorsement on it, and asked him what he would give them for it; the plaintiff replied \$97, to which the defendants agreed, and received the money.

Mr. Coxe, for defendant, prayed the court to instruct the jury; and THE COURT (MORSELL, Circuit Judge, contra) did Instruct them, that if they believed, from the said evidence, that the plaintiff received the said note from the defendants with their indorsement thereon, and without an understanding that they were not to be responsible upon their said indorsement, and that the plaintiff paid therefor only the sum of \$97, the transaction was usurious, and the plaintiff was not entitled to recover.

MORSELL, Circuit Judge, thought the whole subject ought to have been left to the jury without instruction from the court.

Mr. Key, for plaintiff, then prayed two instructions which THE COURT (MORSELL, Circuit Judge, not sitting) refused to give, because the evidence did not warrant the statement of facts upon which the prayers were founded.

Reversed by the supreme court February, 1833, 7
Pet. [32 U. S.] 103.

{See case No. 226.}

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

² [Reversed in 7 Pet. (32 U. S.) 103.]

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