

NICHOLLS v. WRIGHT.

[4 Cranch, C. C. 700.]¹

Circuit Court, District of Columbia.

March Term, 1836.

USURY—COMMISSION ON DRAFT
DISCOUNTED—COMPETENCY OF
WITNESS—DRAWER AGAINST ACCEPTOR.

1. It is usury to take 2½ per cent commission, besides the usual bank discount, on a draft at 45 days to renew a like draft which had been discounted by the plaintiff at the same rate, and which had been drawn to raise money upon, and had become payable to the plaintiff.
2. The drawer of an inland bill of exchange is not a competent witness in an action against the acceptor, to prove that it was given for an usurious consideration.

Assumpsit [by W. S. Nicholls] against [Thomas C. Wright] the acceptor of a draft for \$200, dated January 11, 1834, payable 45 days after date, drawn by Richard Wright, payable to his own order, and by him endorsed in blank. Defence, usury.

Mr. Redin, for defendant, offered to examine Richard Wright, the drawer and endorser of the draft, to prove the usury; and cited *Gaither v. Lee* [Case No. 5,182], in this court, at June term, 1820.

Key & Dunlop, for plaintiff, objected that a party to an instrument cannot be a witness to invalidate it. The supreme court of the United States in *Bank of U. S. v. Dunn*, 6 Pet. [31 U. S.] 51, overruled the doctrine of *Jordaine v. Lashbooke*, 7 Term R. 601, and set up that of *Walton v. Shelley*, 1 Term R. 296.

THE COURT (THRUSTON, Circuit Judge, absent) rejected the witness, upon the authority of *Bank of U. S. v. Dunn*.

The evidence was, that this draft was given to take up a like draft at 60 days, which had been drawn and

endorsed by the said Richard Wright, and accepted by the defendant to raise money upon, and which the plaintiff had discounted, by retaining the usual bank discount for 64 days, and a commission of 2½ per cent, and paying to R. Wright \$192.87. When that draft became payable, the plaintiff agreed to discount this new draft at 45 days, upon the same terms, namely, the usual bank discount, and a commission of 2½ per cent, and refused to allow more favorable terms; the drawer agreed to them, and it was accordingly discounted by the plaintiff on those terms.

THE COURT (THRUSTON, Circuit Judge, absent) on the prayer of the defendant's counsel, Instructed the jury, in effect, that if they found the facts to be so, the transaction was usurious, and the plaintiff could not recover thereupon.

Verdict for the defendant.

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

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