

PALMER V. BLIGHT.

[2 Wash. C. C. 96.]¹

Circuit Court, D. Pennsylvania. Oct. Term, 1807.

BILL OF EXCHANGE—ACTION—PRODUCTION OF
BILL—EXCUSE—PART PAYMENT—ENTRY ON
BILL.

1. In an action by the endorser of a bill of exchange against the drawer, it is sufficient to account for the non-production of the bill, that it was lodged with the commissioners of bankruptcy, under a commission issued against the drawer, and still remains with them.
2. It is not necessary that a receipt for the money paid by the endorser to the endorsee shall be entered on the bill.

This was an issue, sent from the commissioners of bankrupts, to try whether any thing, and how much, is due from the bankrupt to the plaintiff. A great part of the plaintiff's demand arose upon bills of exchange, drawn by bankrupt in favour of plaintiff, and remitted to him in Jamaica, to sell, and to remit the proceeds to bankrupt. He endorsed and sold many of them, and remitted the proceeds, together with those of other bills drawn by plaintiff, and sold for the benefit of bankrupt, by his order. The bills being protested, were returned to and paid by the plaintiff, as is proved by plaintiff's deposition, taken in this cause, by his clerk, and by a settled account between bankrupt and plaintiff, before their respective bankruptcies. Some of these bills having been accepted by the drawee in England, who has become a bankrupt, were sent over and laid before his commissioners, in order to support the plaintiff's claim for a dividend on his estate. They still remain there for that purpose. Others of the bills were produced at the trial, some with receipts endorsed of the payment by plaintiff; some with blank endorsements, and some with the plaintiff's endorsement to the persons to whom the amount was

proved to have been paid, and without receipts or blank endorsements by them.

Mr. Rawle, for defendants, contended, that the plaintiff must either produce the bills, or prove them lost, or otherwise account satisfactorily for his not having possession of them; and, that he ought, either to show them with the receipt for their payment by plaintiff endorsed, or with blank endorsements, subsequent to the special endorsements.

Before WASHINGTON, Circuit Justice, and PETERS, District Judge.

BY THE COURT. It is true, the bills should be produced, or otherwise accounted for, by proving them to be lost, or in a situation not to be again brought against the defendants; and the evidence in this case, shows them to be before the commissioners in England, for the purpose of obtaining a dividend on the estate of the drawee. The evidence, if believed by the jury, proves that they were all paid by plaintiff; which is sufficient, though a receipt for the money was not endorsed on the bills, and though they were not endorsed in blank by the holders, to whom the money was paid.

The plaintiffs obtained a verdict.

¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]

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