

PATRIOTIC BANK v. FRYE.

{2 Cranch, C. C. 684.}<sup>1</sup>

Circuit Court, District of Columbia. May Term, 1826.

WITNESS—BOOKKEEPER OF  
PLAINTIFF—INTEREST—MISTAKE.

1. A bookkeeper, who has given a credit to A. instead of B., by mistake, is a competent witness to prove the mistake, without a release.
2. Only what a witness recollects is competent evidence.

A sum of \$100 had been entered to the credit of the defendant [Nathaniel Frye], in his bank-book by Mr. Bradley, the plaintiffs' bookkeeper, and he was called to be sworn and examined as a witness for the plaintiffs to prove the mistake and that the credit ought to have been given to the 1305 Franklin Insurance Company, who had, in fact, deposited the money.

Mr. Coxe and Mr. Key, for defendant, objected that the witness was interested, because he is chargeable for the loss if the plaintiffs should not recover it of this defendant.

But THE COURT (CRANCH, Chief Judge, doubting) permitted him to be examined, without a release from the plaintiffs.

The witness, when examined, had no distinct recollection that the deposit, on the 14th of December, 1822, was made by the Franklin Company, although the original entry of that deposit, to the credit of that company, was in his handwriting.

Mr. Key, for defendant, contended, and THE COURT decided, that the testimony of the witness, as to that fact, is not evidence unless the witness has a recollection of the fact, his memory being refreshed by his own memorandum.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

This volume of American Law was transcribed for use  
on the Internet

through a contribution from [Google](#). 