

PATRIOTIC BANK v. WILSON.

[4 Cranch, C. C. 253.]¹

Circuit Court, District of Columbia. Nov. Term, 1832.

NOTES—ASSIGNMENT—PAYMENT BY STRANGER.

A person not a party to a note, who takes it up while lying in a bank under protest, and takes a receipt as in payment of the balance due upon the note, cannot, in an action in the name of the bank for his use, recover of the indorser; but if it was a sale or an assignment of the note to him, he may.

Lewis Johnson was indorser of a note of H. Langley, discounted by the Patriotic Bank, which he could not get renewed because another note of Langley, upon which \$57 were due, was lying under protest in the same bank, indorsed by the defendant, [John A.] Wilson, in blank; he therefore paid the balance due upon that note, took it up, and took the following receipt indorsed thereon: "Balance, \$56.27. Received the above amount of fifty-six 27/100 dollars of Lewis Johnson, October 19, 1829. H. T. Weightman, Cashier." For which amount the present suit is brought in the name of the bank for his use.

THE COURT (nem. con.) instructed the jury that if they should be satisfied by the evidence, that the money was received by Mr. Weightman as payment of the note, this suit could not be maintained upon it in the name of the bank; but if they should be of opinion that it was a sale or an assignment of the note, for a valuable consideration, bona fide, then this suit might be maintained in the name of the bank for the use of Mr. Johnson.

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

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