

## SAVARY v. GERMANIA BANK.

{7 Reporter, 615;<sup>1</sup> 19 Alb. Law J. 521.}

Circuit Court, S. D. New York.      March 15, 1879.

TROVER      AND      CONVERSION—PROMISSORY  
NOTE—UNAUTHORIZED TRANSFER—INTENT.

The unauthorized transfer of plaintiff's property by defendant, though without wrongful intent and before demand, is still a conversion.

Motion for new trial.

WALLACE, District Judge. The motion for a new trial must be granted for the reason that under the count in the declaration for a conversion of the notes there was a question of fact for the jury. Upon the trial the plaintiff's rights were mainly discussed on other grounds; the evidence, however, was sufficient to authorize the jury to find that the defendant acquired the notes payable to the order of the plaintiff through a forged indorsement of his name without the consent of the plaintiff to the maker. Upon this theory of the facts the plaintiff was entitled to recover. The defendant is not absolved from liability because it acted in good faith. No person except the payee can assert any title to a bill or note payable to his order without his indorsement. While the unauthorized delivery of a bill or note payable to bearer vests a good title in a bona fide purchaser, an unauthorized indorsement of the payee's name, when the note or bill is payable to order, conveys no right of action. Byles, Bills, 24. When the defendant delivered over the plaintiff's notes to a person not entitled to them, assuming the right to deal with the notes in disregard of plaintiff's title, it was a conversion, although the defendant supposed the notes belonged to the maker as a voucher, and although it was acting merely as the agent of the maker in what it did. A wrongful intent is not an essential element of a

conversion; it suffices that the rightful owner has been deprived of his property by some unauthorized act of another who assumed dominion or control over it; and the latter is not excused because he was acting as agent for one whom he supposed to be the true owner and derived no benefit himself from the transaction, and parted with the property before any demand for its restitution. *Wright v. Hawley*, affirming *Dudley v. Hawley*, 40 Barb. 397, 39 N. Y. 441. Motion granted.

<sup>1</sup> [Reprinted from 7 Reporter, 615, by permission.]

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