

TOMBECKBEE BANK OF MOBILE v.—
[1 U. S. Law Int. 244.]

Circuit Court, D. New York.

Aug., 1829.

DAMAGES ON BILLS OF EXCHANGE.

At law.

Daniel Lord, Jr., for plaintiffs.

G. Sullivan and G. Winter, for defendants.

Before EDWARDS, District Judge.

The Tombeckbee Bank of Mobile held the drafts on a house in that city, duly accepted, but protested for non-payment, and settled with an endorser, receiving the principal and interest only, and reserving one of the bills as the ground of an action on which to recover the damages on all the bills,—amount of damages at ten per cent., \$2,500. This action was brought to recover these damages. The declaration was in usual form on a bill of exchange against drawers. In defence, the counsel for the defendants insisted that by receiving payment of the principal and interest of the bills, the holders had lost all right to the damages, and relied on the case of *Johnson v. Brannan*, 5 Johns. 268, where an indorsee was denied the right of recovering the interest on a note, of which the principal had been paid, and the court held interest could not be recovered separately after payment of principal.

EDWARDS, District Judge, in charging the jury, instructed them that the plaintiffs, by receiving the principal and interest of the bills of exchange, had, in effect, released all rights to damages; and damages could not be recovered on a bill after the principal and interest had been received by the holder. The jury returned a verdict into court, but, the plaintiffs' counsel claiming to be called, and not answering to the call, the verdict, which was for the defendants, was not recorded, and the plaintiffs became nonsuited.

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