

Case No. 17,799.

WILSON v. CROMWELL.

[1 Cranch, C. C. 214.]<sup>1</sup>

Circuit Court, District of Columbia.

Dec. Term, 1804.

ACCEPTANCE—FRAUDULENT POSSESSION.

If the plaintiff obtain possession of the defendant's acceptance, by a fraudulent practice, he cannot recover upon it.

Assumpsit on acceptance of an inland bill The defendant proved that upon the assumption of J. H. Barney in writing, to pay the debt, the acceptance was given up by A. & W. Bowyer to the defendant to be cancelled. That afterwards, the plaintiff, under pretence of a wish to see the bill, to calculate the interest upon Barney's assumption, got possession of it, and then gave up to Barney his assumption, and insisted upon keeping the bill.

Mr. Baker, for plaintiff, contended that A. & W. Bowyer, to whom the bill was sent for collection, were only special agents to receive the money of Cromwell, and, in default of payment, to bring suit. That if such was the only authority of the Bowyers, and they gave it up without any other consideration than J. H. Barney's assumption, they exceeded their authority, and it was improperly obtained; and therefore it was proper in the plaintiff to get possession of the bill in the manner he did. And that it would support the action; and prayed the instruction of the court to that effect Esp. N. P. 109.

But THE COURT refused to give such instruction; and upon the prayer of Mr. Morsell, for defendant, THE COURT instructed the jury that if they should be of opinion that the Bowyers came into possession of the bill by authority of the plaintiff for the purpose of collection, and they gave it up to the defendant to be cancelled, without any fraud on the part of the defendant, and the plaintiff afterwards obtained possession of the bill by a fraudulent and deceitful practice, the plaintiff could not recover upon it. And that if they should be of opinion that the note was fairly given up by Bowyer to the defendant to be cancelled, and the plaintiff obtained possession of it by any false pretence, it would be evidence of a fraudulent obtaining of the possession.

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