Walker Vs. Bank of Washington

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Appeal No. : 44 U.S. 62

Appellant : Walker

Respondent : Bank of Washington

Judgement :

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Walker v. Bank of Washington

44 U.S. (3 How.) 62

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Every subsequent security given for a loan originally usurious, however remote or often renewed, is void.

Where there was an application to a bank for a discount upon a note, to be secured collaterally, and the party applying drew checks upon the bank which were paid before the note was actually discounted, and the bank treated the note, when discounted, as having been so on the day of its date, instead of a subsequent day on which its proceeds were carried to the credit of the party, it was held not to be usury.

The court below was right in refusing an instruction to the jury that, upon such evidence, they might presume usury as a fact.

In cases of a written contract, the question of usury is exclusively for the decision of the court.

The facts were these:

On 30 January, 1840, Walker, the plaintiff in error, addressed the following letter to the bank:

"GENTLEMEN: I am desirous of obtaining a loan of twenty-five thousand dollars to purchase cattle for fulfilling my contract with the government, for N. York Station, say 2,000 barrels, and amounting to nearly $27,000."

"In security for the above money I'll assign all my right and title to the beef now on hand, say barreled and salted, and all that I may have (reserving a prior right of $3,000, already given for Norfolk Station) at the warehouse on Bradley's Wharf, to be subject to your control."

"I'll deposit an accepted draft of E. Kane, Esq., navy agent, for the payment of my contract for N.Y. Station."

"Y'rs resp'y,"

"JNO. WALKER"

On 6 February, 1840, John Walker executed a promissory note in favor of Henry Walker or order for $10,000, payable ninety days after date, negotiable and

payable at the Bank of Washington. This note was delivered to the bank under the circumstances stated in the first bill of exceptions. The note upon which the suit was brought was a renewal of it, dated 9 May, 1840, the maturity of the above.

On the 19th of February, 1840, the following draft was drawn:

"ELIAS KANE, Esq., Navy Agent, Washington, D.C."

"SIR: Please pay to James Adams, Esq., Cashier of the Bank of Washington, or order, the sum of ten thousand dollars out of the delivery of navy beef to be made by me at the Navy Yard, Brooklyn, New York, under my contract, dated 30 September, 1839."

"And oblige, sir, very respectfully &c.;, your ob't. serv't."

"JNO. WALKER"

"Washington, D.C., February 19, 1840 "

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On the face of the foregoing draft was the following acceptance, to-wit:

"Accepted, to be paid by me, when the bills shall have been received and duly approved by the commandant of the Navy Yard."

"ELIAS KANE"

On 20 February, 1840, Walker executed to the bank a bill of sale of all the beef which he had then on hand or should put up, reciting that he, Walker, stood largely indebted to the bank on loans and discounts obtained from it, and was anxious to secure the payment of notes that had been drawn or given, or might thereafter be drawn or given &c.;

On 2 April, 1840, the following draft was drawn, which is referred to in one of the exceptions:

"ELIAS KANE, Esq., Navy Agent, Washington, D.C."

"SIR: Please pay to James Adams, Esq., or order, the amount due me for delivery of navy beef, to be delivered by me, under my contract, at the Navy Yard, Brooklyn, New York."

"And oblige, sir, very respectfully, your ob't serv't,"

" *April 2d 1840* JNO. WALKER"

On the face of the above was the following acceptance, to-wit:

"Accepted, to be paid by me, when the bills shall have been received and duly approved by the commandant of the Navy Yard, Brooklyn, New York."

"ELIAS KANE, *Navy Agent* "

On 9 May, 1840, the following note was executed upon which the suit was brought:

"[$10,000] City of Washington, May 9, 1840"

"Thirty days after date I promise to pay to Henry Walker, or order, ten thousand dollars, for value received. Negotiable and payable at the Bank of Washington."

"JNO. WALKER"

"Credit the drawer"

It was endorsed by Henry Walker, Lewis Walker, and John Walker.

Not being paid at maturity, suit was brought upon it in May, 1840, and in 1841 the case came on for trial, when the following exceptions were taken, on the part of the defendant.

" *1st Bill of Exceptions* "

"At the trial of the above cause, the plaintiffs having given evidence tending to prove the handwriting of the defendant to the promissory note declared upon, read it in evidence, and then rested."

"Whereupon the defendant then gave evidence, tending to show that the note dated on 9 May, 1840, was given in renewal of a previous note dated on 6 February, 1840, similarly signed and endorsed, payable ninety days after date, which said

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note, of 6 February, 1840, was discounted by the plaintiffs, at the request of the defendant, for his accommodation, as a loan, on 18 February, 1840, but not passed to his credit until 22 February, 1840, at which time, last aforesaid, an officer of the plaintiffs deducted from the proceeds of said note the interest on the same, computed from the date of said note (6 February, 1840) for the period of ninety-four days, and that said note nowhere appeared on the books of the plaintiffs until 18 February, 1840; that the whole amount credited by plaintiffs to the defendant, as the consideration of said note dated upon 6 February, 1840, and discounted only upon 18 February, 1840, and passed to defendant upon 22 of same month, was the sum of $9,843.33; and that the sum of $156.67 was taken by said plaintiffs, as the interest upon said note, for the time the same was discounted. And further gave evidence, tending to show that the said note of 6 February, 1840, was surrendered to the defendant upon the execution of the said note of 9 May, 1840 (the said last mentioned note being but a renewal of the former), and that the said plaintiffs credited the defendant, on account of the said note of 9 May, 1840, only the sum of $9,943.33, and took, as interest upon said last named note, the sum of $56.67, which was exacted from said defendant."

"Whereupon the plaintiffs gave evidence, tending to prove that, on 20 January, 1840, the defendant had checked out of plaintiffs' bank $1,224.93; that on 6 February, 1840, he had checked out of plaintiffs' bank $2,500, and on 21 February, 1840, he had checked out of said bank to the amount of upwards of $7,000, all of which last named sums of money were charged to defendant on the

books of the plaintiffs, and no moneys or funds appeared to his credit at the time of drawing out said last mentioned sums of money, and that on 22 February, 1840, the plaintiffs credited said defendant with $9,843.33 as the proceeds of said note dated 6 February, 1840, and the balance then appearing to be due to defendant on the books of the plaintiffs, after charging him with the several amounts so as aforesaid drawn out of bank by him previous to 22 February, 1840, was $997.86, which balance was shown to the defendant, and assented to by him."

"The defendant then gave evidence tending to show that the said note, dated 6 February, 1840, was brought, on or after 11h February, 1840, it being a discount day, by the president of the plaintiffs, or a bookkeeper of said plaintiffs, to the discount clerk (the witness) and given to him as a note not done, or not passed by the board of directors, and that said note remained in the hands of such discount clerk until 18 February, 1840, when it was passed by the said board, and on 22 February, 1840, the sum of $9,843.33 was passed to defendant's credit as the net proceeds

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of said note, and that interest, at the rate of six percentum per annum on $10,000, computed from the date of said note, for ninety-four days, was reserved at the time of entering such credit, by direction of some officer of the plaintiffs, and that it was the usual practice of plaintiffs to take interest on discounts only from the time of making the discount, and that it does not appear that defendant was credited on plaintiffs' books with the interest computed from 6 February aforesaid."

"The defendant then asked the cashier of the plaintiffs, who was sworn as a witness in said cause, whether the amounts drawn out of bank by the defendant previous to 22 February, 1840, as aforesaid, were not charged on the books of the plaintiffs as overdrafts and were not allowed as the personal credit of the defendant."

"Whereupon the said cashier answered that he had no doubt but that the defendant was allowed to check upon said note of 6 February, 1840, before the

same was entered to his credit on the books of the bank. And being further asked for the reasons of this opinion by the defendant's counsel, he stated that he had no recollection of said note's being in bank previous to 18 February, 1840, or of its existence, or of any arrangement with reference to it previous to that date, and that the said amounts, so checked out previous to 22 February, 1840, would not have been paid on defendant's checks but for the knowledge on the part of the said cashier that he (defendant) had a large contract with the Navy Department for the supply of beef, and that for antecedent liabilities the defendant had given to plaintiffs good collateral security, from which, however, no surplus resulted after paying said liabilities, and that the said advances made to the defendant after 6 February, 1840, and previous to 22 February, 1840, were made on security given, or to be given, but he does not know of any security given during that time except the defendant's letter of 30 January, 1840, a bill of sale by defendant to plaintiffs, of his barreled beef dated 20 February, 1840, and the two acceptances of the navy agent dated 19 February, 1840, and 2 April, 1840, and the note, dated 6 of February, 1840, of which the said cashier has no recollection, until the 18 of February, 1840, and that he is satisfied that said advances were not made on the personal credit of defendant. And, from all the above circumstances, he has no doubt that said note of 6 February, 1840, was in bank from the time of its date, and that defendant was allowed to check on said note from the day of its date."

"Whereupon the defendant moved the court to instruct the jury that the facts mentioned by said cashier are evidence in said cause, but the inferences or opinions of said cashier are not evidence; but the court refused to give such instructions as prayed, but instructed the jury that the inferences or opinions of said witness are not of themselves evidence of the facts so inferred, but that the facts stated

by the witness as the ground of his inference or opinion, are competent to be given in evidence to the jury, together with the inference or opinion of the said witness, from which facts the jury are to judge whether such inferences and opinion are justified by the facts thus stated. Whereupon the defendant excepts to the said

refusal and to the instructions so given, and this, his bill of exceptions, is signed, sealed, and enrolled, this 24 December, 1841."

" *Defendant's 2d Bill of Exceptions* "

"After the evidence contained in the aforegoing bill of exceptions had been given, the defendant prayed the court to instruct the jury that"

"if the jury believe, from the evidence aforesaid, that the advances to defendant named in the evidence were not made upon the note of 6 February, 1840, and that the plaintiffs, upon discounting said note, received or reserved more than at the rate of six percentum per annum, then the jury may infer usury, from the whole evidence aforesaid, in said note of 6 February, 1840."

"And"

"if the jury believe, from the evidence aforesaid, that the note of 9 May, 1840, named in the evidence, was given in renewal of a former note of the defendant, dated on 6 February, 1840, payable in ninety days after date, and which last note was discounted by the plaintiffs, as a loan to the defendant, on 18 February, 1840, but was not passed to the credit of the defendant until the 22 February, 1840, and that the said plaintiffs then charged and received interest upon the same from the date of the said note, to-wit, from 6 February, 1840, it is the taking above six percentum per annum for the loan of the money made to the defendant upon said note, and is usury, and the defendant is entitled to a verdict in his favor upon said note, notwithstanding the jury may find, from the evidence, that the defendant had overdrawn his account, as stated in the evidence, unless they further find that the said interest, reserved as aforesaid, was credited to defendant's account as a credit to take effect from the 6th February, 1840."

"But the court refused to grant each of said prayers, though presented seriatim. Whereupon the defendant excepts to the said refusal, and this, his bill of exceptions is signed, sealed, and ordered to be enrolled, this 24 December, 1841."

" *Defendant's 3d Bill of Exceptions* "

"In addition to the evidence contained in the foregoing bill of exceptions, which is made part hereof, the defendant gave evidence tending to show that, in October, 1839, the plaintiffs suspended specie payments, and have not, since that time, paid their notes in specie or its equivalent until July, 1841, and further gave evidence tending to prove that the paying teller of the plaintiffs, according to his impression, would not have paid the checks of the defendant for the amounts credited to defendant as aforesaid, on 11 and 28

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February, 1840, if drawn for the entire amounts in district bank paper or in the plaintiffs' paper, unless he had received special instructions to that effect from the president, or unless he, the paying teller, knew that the plaintiffs were at that time desirous of increasing the circulation of their own notes; that he considered he had a discretion on that subject, in absence of instructions, and has no recollection of having received any instructions in regard to the discounts to defendant, or any general instructions as to the mode of paying discounts at that time, though it is his impression that he would not have paid discounts to so large an amount in district bank paper or plaintiffs' paper at that time, nor would they, at the date of said notes, have received on deposit paper of Virginia banks (they having also suspended at the same time) in large amounts, or to the amount of either of said notes, unless for the accommodation of a regular customer of the plaintiffs, and only in that case upon the understanding that he would receive back the said deposit in the same kind of funds; and that the plaintiffs would not, by their officers, have received payment of the notes in suit, in case their amounts had been tendered at the time of maturity, in the paper of Virginia banks (all of which were in a State of suspension of specie payments), and that the market value of Virginia bank notes in the months of February, March, April, and May, 1840, in the City of Washington, where the plaintiffs did business, was from 1/2 to 1 percent less than the notes of the banks in said district or the notes of banks in Baltimore, Maryland."

"And the defendant further gave evidence to show that on 30 January, 1840, he sent to the plaintiffs his written application for a loan in these words (see

statement). That he afterwards executed the note of 6 February, 1840, named in the first bill of exceptions, and the note of 25 February, 1840, now in suit, and then was passed to his credit, on 22 February, 1840, on the books of the plaintiffs, the sum of $9,843.33, as the proceeds of the discount of said above-named note of 6 February, 1840, and on 28 February, 1840, the further sum of $5,939 was passed to his credit on the books of the plaintiffs as the proceeds of the discount of the note dated 25 February, 1840. That the defendant checked out of the plaintiffs' bank the said several amounts so credited to him, and he gave evidence to show that some of his checks for said amounts were specially made payable in Virginia notes, and were in that form paid by the plaintiffs. That a check for upwards of $900, drawn by the defendant on plaintiffs on 29 February, 1840, for part of the proceeds of the note of 25 February, 1840, passed to his credit as aforesaid, was also made payable in Virginia money on its face, but the plaintiffs, through their officers, refused to pay even Virginia money on said check, but against the wishes and request of the bearer, one Sinclair (to whom the said check was given, for value by said defendant), paid the said check in notes of

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suspended banks in Delaware, Pennsylvania, and Ohio, being notes more depreciated in value than Virginia paper in said District of Columbia, and that said Sinclair had to pay, on $260 of said money paid to him on said check, a discount of $10, to obtain the equivalent of Virginia notes, and the balance of said proceeds of said check the said Sinclair could not pass at all, and he required the defendant to take it from him, which he did. And further gave evidence tending to prove that at the time of the dates of said note, and of the proceeds thereof being credited to defendant as aforesaid, it was the practice of the plaintiffs, through their officers, not to pay out the accommodations or discounts made by the plaintiffs, to such large amounts as either of said notes, in the local bank paper of said district or in specie, but in paper more depreciated than that of the said banks in said district. And further gave evidence tending to show that in February, March, April, and May, 1840, notes of the Virginia banks were not considered bankable money, and that the plaintiffs had a notice posted up in their bank, that they would not receive

the paper of the Virginia banks on deposit or payment of debts; and that the defendant did receive the proceeds of the loans stated as aforesaid in Virginia paper, and some in Pennsylvania paper."

"And the plaintiffs, in cross-examining the said witness in said cause, further proved, that said Walker always drew out personally, and on his checks, either the Virginia money or the other money, as he desired or directed, and generally such as he asked for, and never at any time made any objection to the moneys he was paid in, and further, that he declared that Virginia money was as good to him as any funds in which he could be paid, and that he preferred it to any other. And further proved, that the state of the bank, and its business, and the notes they usually paid out, at the date of said defendant's letter, and at the date of the notes and the times of their being discounted, were well known to the customers of the bank, and that the defendant was then, and had been before, a considerable customer; and that all the notes of Virginia banks, or of other banks, paid out to defendant or other dealers, were received by the bank in the way of its business, at par, and notwithstanding the notice aforesaid, the bank took such notes in small payments, or when mixed with others in large payments, or on deposit by customers whose business was such as induced the officers to expect that they would take the same sort of notes in payment from the bank."

"And the plaintiffs further proved, on the cross-examination of said witness, the cashier of said bank, that, at the time of the dates and discounting the said notes, it was the custom of the bank to pay out, for the proceeds of its discounts, its own notes, or the notes of other banks, as desired by the parties receiving such discounts; that when the parties required it, they paid out their own notes, and when no particular paper was required, they paid out such as had most accumulated, and it was most convenient for the bank to pay out, and

that said Walker, if he had insisted on it, would, at the times of payment to him of said proceeds of said notes, according to their then practice, have had paid to him the same in their own notes."

"Whereupon the defendant prayed the court to instruct the jury, as follows, to-wit:"

"Prayer No. 4: "

"That if the jury believes from the evidence aforesaid that at the time the plaintiffs advanced the amounts of the notes in question, after deducting the discounts on the same, it was well understood and arranged between the plaintiffs and defendant, that the said amount should be advanced and loaned by plaintiffs to defendant, on condition that defendant should draw such amounts from said bank in Virginia bank notes, or in notes of other state banks in a State of suspension of specie payments -- all which notes were depreciated in the market, and commonly passed below the current value of the notes of the said bank, and notes of other suspended banks in this district, and all without exception, as well the notes of the said bank as of other suspended banks of this district, were considerably depreciated, and commonly passed below the current money of the United States, and that defendant did, in pursuance of the terms and conditions of said loan, in fact receive the amount of said loans from the plaintiffs in the bank notes of Virginia and of other states, which, at the time the same were so received by defendant, were depreciated considerably below the current value of the bank notes of this district, and still more considerably depreciated below the standard and current value of the current money of the United States, without any allowance for the depreciation of the same; and that such depreciation was well known to plaintiffs at the time and times of such loans, and that defendant would not have been permitted, and in fact was not permitted, by the plaintiffs or the officers of said bank, to draw out the amounts of such loans from the said bank, either in the notes of said bank, or of other solvent though suspended banks of this district, or in the current money of the United States, and that the plaintiffs were to have received, and expected to receive, in repayment of said advances and loans, current money of the United States, out of the said drafts on the navy agent, and would not have received, in repayment of said loans, the whole amount of either loan or note, the bank notes of Virginia or of other state banks in a state of suspension, and that such current money of the United States was then at a premium very considerably over and in exchange for the notes of any of the

suspended state banks, and of any of the banks in this district; then the jury should conclude from said facts, that the said loans were usurious, and the said notes void."

"Prayer No. 5: "

"If the jury believes from the evidence aforesaid that there was an application by the defendant to the plaintiffs for a loan of a large sum of money, and that the defendant being in want of such sum

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of money, plaintiffs agreed with him to loan him the amounts of the notes in suit, provided he would take the said amounts (after deducting therefrom the rate of six percentum on the same for the time the said notes had to run) in notes of Virginia banks in a state of suspension, or some other state banks in a state of suspension, at their nominal amount, which said suspended bank notes were then depreciated in value below the value of the district bank notes, and much more depreciated below the value of specie, and that defendant would previously execute his notes to the plaintiffs for the nominal amounts so to be advanced to him, superadding thereto the interest on the amount mentioned in each of said notes for the time said note had to run, and that the defendant, in pursuance of said agreement, did afterwards receive the said notes of suspended banks in Virginia and other suspended state banks. And that if the jury further find that the bank reserved, on the respective nominal amounts of money so loaned to the defendant, interest thereon at the rate of six percentum per annum, paying him the balance of said loans in the depreciated paper aforesaid, and that the plaintiffs, according to the agreement between them and defendant, expected and intended to receive the amount of the notes in suit, with interest thereon, in specie, or in funds of greater value than the money so paid, as the proceeds of said notes as aforesaid, then the said facts, if believed by the jury, constitute an usurious agreement, and all contracts founded thereon are null and void."

"Prayer No. 6: "

"If, from the evidence aforesaid, the jury shall find an agreement between the plaintiffs and the defendant, by which the defendant borrowed from the said plaintiffs the amounts of money mentioned in said notes, deducting interest on said amounts at the rate of six percentum per year, and that the proceeds of said loans were paid to the defendant by the plaintiffs in depreciated bank notes, as a device and with intent to evade the statute of usury, and that the said notes were founded on such agreement and made in pursuance thereof, then the jury ought to find the said agreement to be usurious."

"Prayer No. 7: "

"If the jury believes from the evidence aforesaid that the notes in suit were given in consideration of a loan or loans of money made by plaintiffs to defendant, and that by the terms of the agreement on which said loan or loans were made, the defendant was compelled to take the same in depreciated paper, (well known to the plaintiffs to be depreciated) whereby the defendant not only paid the legal interest on the nominal amount of said loans, but sustained a loss on the depreciated paper with which the plaintiffs paid him, then it is competent for the jury to infer usury from the whole circumstances in evidence."

"Prayer No. 8: "

"It is competent for the jury, from all the circumstances in evidence,

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to infer usury in the agreement or agreements on which the notes in suit were founded."

"But the court refused each of said prayers, though presented *seriatim,* and the defendant excepts to such refusal, and claims the same benefit of exception as if each refusal aforesaid was separately excepted to. And this his bill of exceptions is signed, sealed, and ordered to be enrolled, this 24 December, 1841."

MR. JUSTICE WAYNE delivered the opinion of the Court.

This suit is brought upon a promissory note, given in renewal of a former note, which had been discounted by the defendants in error. The defendants in the court below deny that the plaintiffs have any right of action upon the note sued on, on the ground that the first note was tainted with usury.

Such is the law in such a case. The mere change of securities for the same usurious loan to the same party who received the usury, or to a person having notice of the usury, does not purge the original illegal consideration, so as to give a right of action on the new security. Every subsequent security given for a loan originally usurious, however remote or often renewed, is void. *Tuthill v. Davis,* 20 Johns. 285; *Reed v. Smith,* 9 Cow. 647, and the cases of *Sauerwein v. Brunner,* 1 Harr. & G. 477; *Thomas v. Catheral,* 5 Gill & J. 23, decided in the courts of appeal in Maryland, under the statute of which state, it is said, the note now sued upon is void. But such is not the case before us. The defendant, Walker, had entered into a contract with the United States to supply the navy with beef, and to enable himself to do it, he applied to the bank, by letter dated 30 January, for a loan of $25,000, and offered as a security a draft upon E. Kane, the navy agent, and also to assign to the bank the beef which he might put up. The bank accepted his offer, but before Walker gave the draft upon Mr. Kane, or made the assignment, he drew his note on the 6th day of February, seven days after he had written his letter asking for a loan, for $10,000, at ninety days, and handed it into bank, which note, at maturity, was renewed by the note of 9 May, now in suit. This note, however, was not discounted until 18 February, and when then done, the proceeds were not passed to his credit until the 22d. The cause of the delay, in both particulars, the proof in the case shows, was that Walker did not, until 19 February, draw his draft upon the navy agent, as he had proposed to do, or make an assignment of the beef to the bank, until the 20th. He may or may not have passed the navy agent's acceptance to the bank on the day it is dated or have delivered his deed for the beef the day after, but between those days and the 22d, inclusive, he did so, and the bank's security being then in its possession as he had offered it, the proceeds

of his $10,000 note was, on the last mentioned day, passed to his credit. But in the meantime, Walker had drawn out of the bank, upon his checks, more than seven thousand dollars, with which he was debited when the proceeds of his note were carried to his credit, which sum and the interest upon it, computed for ninety-four days, from the date of the note, left a balance to his credit of $997.86. The computation of the interest from 6 February, instead of from the day when the proceeds were carried to his credit, is the usury complained of. The letter of the defendant of the 30 January, asking for the loan of $25,000; the acceptances of his drafts upon the navy agent by that officer, and the defendant's assignment to the bank of certain portions of the beef which he had on hand, and which he might put up under his contract with the United States, and which assignment was not executed until 20 February, were in evidence before the court below. The assignment recites the defendant's contract with the United States so far as it was necessary to introduce the contract which he was about to make in it with the bank; then his indebtment to the bank for loans and discounts, his intention to secure the payment of the money due by him, and all drafts, note or notes that have been given for the same or might be afterwards given by way of substitution or renewal of such drafts or notes or any of them, &c.;, and then states that the money which had already been advanced or loaned or which might afterwards be advanced or loaned by the bank to the defendant, being for the purpose of enabling him to fulfill his contract with the United States.

Now the proof is positive on both sides that the note sued on was given in renewal of the note of 6 February, which had first been given under his proposal for a loan, and that it was intended to be the note, the payment of which was to be secured by the assignment. Such being the evidence, the court correctly refused every instruction which was asked to refer the question of usury to the jury as a fact. It was a case of a written contract, in which the court had the exclusive power of deciding whether it was usurious or not. *Levy v. Gadsby,* 3 Cranch 180. But if it were not so, we think the instructions, as they were asked, could not have been given by the court to the jury. Each of them called upon the court to give an opinion upon the sufficiency of the evidence, and in all of them, except the eighth, there was a separation of the facts from the entire evidence, so as to bring them

under the cases of *Scott v. Lloyd,* 9 Pet. 418; *Greenleaf v. Booth,* 9 Pet. 292; and that of the *Chesapeake & Ohio Canal Co. v. Knapp,* 9 Pet. 541. Nor do we think that there was any error in the instruction given by the court to the jury under the defendant's first prayer. The court sufficiently distinguish between the facts of the cashier's evidence and his belief, and tell the jury that they are to determine by the facts whether the cashier's inferences were justified.

The judgment of the court is

Affirmed.