RALEIGH REGISTER,

AND NORTH-CAROLINA GAZETTE.

"Ours are the plans of fair, delightful Peace,
"Unwarp'd by party rage, to live like Brothers."

VOL. XXII. | FRIDAY, SEPTEMBER 28, 1821. | NO. 1149.

LAW CASE.

[Re-published from the Southern Patriot, by request.]

James Patton, inp. vs. State Bank. Same, vs. Bank S. Carolina.

This was an action of assumpsit, tried before the honorable the Recorder, in the Inferior City Court of Charleston, May 1820; in which the Jury found a special verdict in the following words:—"We find that on the 16th of August, 1819, five halves of five bank bills, of the bank of the defendants, payable to bearer, and amounting together, before they were cut, to the sum of one hundred and eighty dollars, the property of the plaintiff, were enclosed by the agent of the plaintiff in a letter which was lodged in the post office at Salisbury and directed to the plaintiff at Philadelphia; that on the 15th of the same month, the remaining halves of the said bills were forwarded to the plaintiff by mail, by the same person, from the same place, and duly secured by the plaintiff: but, the five half bills enclosed and directed to him by mail, as aforesaid, on the 10th of August, never reached the plaintiff, in consequence of the mail, in which they were, being robbed, and the letter and said half bills feloniously taken away by persons unknown. That the plaintiff thereupon caused the said half bills which came to his hands, as aforesaid, to be shown and presented at the bank of defendants in Charleston, and full payment of the whole to be demanded of defendants—he, the said plaintiff, offering at the same time to give a bond of indemnity to save the bank harmless from any future liability to any one on the five other halves of the said bills, which plaintiff had been thus deprived of; that the defendants refused to accept the indemnity offered, or to pay the half bills as if they were whole—but offered, according to the custom of the State Bank in this city, (which custom we find exists) to pay plaintiff ninety dollars, being the moiety of the whole five bills, which plaintiff refused to accept. Now, if the Court should be of opinion that if defendants, by law, were liable to pay the whole of the said five bills, upon the presentation of the said half five bills, under the circumstances aforesaid, then we find for the plaintiff $180, with interest from the time of the demand, and costs; but if, on the contrary, the Court should be of opinion that the defendants were not bound to pay the whole, unless the whole of the notes or bills were presented for payment, then we find for the defendants, with costs."

On this verdict, judgment was awarded for the plaintiff, and a motion was made to reverse that judgment, on the ground that the facts found, entitled the defendants to a judgment, half notes being negociable under the custom established by the verdict, at half their whole value.

The following Opinion of the honorable the Recorder, on the question made, accompanied the report:

"In determining the question arising under these special verdicts, I shall not consider the effect which might be produced by an indemnity being given to the defendants; nor shall I be influenced by the custom found to exist in the State Bank and the Bank of South-Carolina, of paying a moiety of the amount of a bill, when half of it is presented; because I think that this court cannot order or judge of an indemnity, neither can a verdict be given by the jury requiring the execution of such a condition. Nor is usage admissible to contradict or explain the meaning and import of writing, the terms of which are unambiguous. The meaning of a bank note is to be collected from its language; its language is plain and not to be misunderstood, its popular and technical import are the same; it must therefore be governed by the rules that relate to similar instruments. The only question then remaining is, whether the defendants are bound to pay the whole amount of the bills declared upon, under the circumstances found in the verdicts upon the presentment of the halves, unaccompanied by any proof of the physical destruction of the other halves not produced.—The jury have found that the halves not produced have been stolen by persons unknown; as the Court can intend nothing which is not contained in the verdict, the stolen halves must be regarded as being in existence. On the parts of the defendants, it is contended that the plaintiffs cannot recover, unless they exhibit the notes, or prove their destruction, or show that their negociability has ceased; and this appears to me to be a correct presentment of the case. If the negociability of the missing halves be destroyed, so that the banks cannot twice be recurred to for their payment, they run no risk in paying their total amount to the plaintiffs; it would, therefore, seem unreasonable, where the banks are absolved from this responsibility, that the plaintiffs, admitted to be the bona fide owners of the bills before they were divided, should nevertheless, not be able to recover their amount. By the defendants it has been said that a bank note is money: that, in law, it is regarded as such, and that there would be no more impropriety in subjecting a bank to the payment of $100, upon the production of half of a note of that denomination, than in compelling it to give a dollar or a doubloon, on the production of moieties of these coins. On the other hand, it is urged by the plaintiff that a bank bill is an acknowledgment of a debt due by the bank to the holder of it; that in its nature, it is not negociable, and cannot be so rendered by the bank. Both of these positions appear to me to be incorrect. It is true that a bank bill is generally received as money; that it passes as current as money, and that a tender in bank bills, in England, if not objected to, is a legal tender. But a general practice and convenience will not change the nature of things. Notes of individuals are frequently taken and passed away as money, but it will not be said that they are so; it is requisite that a tender, if demanded, should be made in money, and yet an objection to bank notes is valid, for the only reason that they are not money. Money, according to its legal import, in this country, is coined metal, current for specific amounts, by the authority of the government. A Bank note is an evidence that a certain quantity of such coin is due to the holder of it, but the bill and money differ as much from each other, as a title does from an estate, or the power from the fruition. That a bank bill is an acknowledgment of a debt due to the holder of it, must be admitted; but an obligation of this nature is perfectly consistent with negociability, and bank notes are as much negociable as any commercial instruments with which we are acquainted, and a right of property in them is as fully transferred by a delivery, as in a promissory note, payable to order, by an endorsement. Upon the face of its bill, a bank promises to pay the bearer a certain sum upon demand; according to the contract, the bearer, when he asks for its payment, is bound to produce it. The general rule is, that a person making a demand should accompany it with the evidence of the debt, for the debtor has a right to see his obligation cancelled, or to have it delivered to him when he is called upon to discharge it. This is a rule applying to every species of obligation, but especially to a negociable security, which may have legally been transferred to another, at the very time when the original payee makes his demand for payment.—But to almost every general rule there are exceptions, the books are full of cases, where a party may recover who has lost the evidence of his claim, upon due proof of its having existed, of its contents and of its loss; to this exception there is again an exception, that a negociable instrument is not included within it, because if it were, a debtor might be twice obliged to discharge his debt; but if a negociable promissory note, not endorsed, has been lost, as it is then divested of the nature of a negociable paper, upon the proofs before mentioned, a suit can be maintained for its recovery; the same rule governs if a negociable instrument has been destroyed: *Chitty* 167, 2 *Campbell* 212. Does not the case before us come within the reason and principle of these exceptions. The bills were negociable when received by the plaintiff, they have by no act of his been transferred. Can the halves which are missing be rendered negociable by any act of the plaintiff or of any other person?—No property in the whole notes can be vested in the possessor of the stolen halves—he could not produce the evidence of his right; he never had the whole notes, and excepting in certain instances, within which his case is not embraced, to give authority to demand payment of a note, the note must be exhibited; he could not prove the loss of the halves owned by the plaintiff—they are not lost; he could not prove a right of property in these halves—he never had it; he could not even appear as the *prima facie* owner—possession is necessary for that purpose. Suppose, after the payment of these bills to the plaintiff, that the holder of the other halves should call upon the bank, and granting (which is very improbable) that he took the missing halves in the course of business, having given for them a valuable consideration, still he would hold them with notice that the right to the amount of them might be in the proprietor of the other halves, and he would consequently be bound, by every defence which could legally or equitably be insisted upon, against the finder or robber, because he would have accepted them under such circumstances as would necessarily set him upon an enquiry. The individual from whom the receiver of these halves obtained them, might be liable to him, but not the bank, whose notes he never had. If the drawer of a negociable note have notice before payment that it is lost and nevertheless pay it, he does so at his peril; and it turns out that the receiver of it had no title, the drawer will be liable to the real owner—*Lovell vs Martin, in Taunt.* This decision relates to a negociable instrument, in which, as in the case of a bank bill, the right of property would be *prima facie* in the holder. If a bill be lost and found, the finder has no property in it against the owner, tho' he has against all other persons:—*Salk.* 426. Now the finder or possessor of the notes in question would be in the same situation as the finder of the bill in the case quoted, and yet he would have no right against the real owners, who were the plaintiffs, and who, by the verdict of the jury, have never transferred their property. There is a case in 3d Camp. 324, where the facts are similar to those before us, in which the determination was, that the original bona fide holder could not recover. The ground upon which Lord Ellenborough decided is: That the half of the note, (which had been stolen from the mail) might have immediately got into the hands of a holder for valuable consideration, and he would have as good a right of suit upon that, as the plaintiff upon the other half. I should speak with very great diffidence, when I said, for the reasons before expressed, that it does not seem to me that the conclusion of the English Judge is warranted by his premises, were I not sustained in this judgment by the decision of two judges of the Supreme Court of the United States, which are in accordance with the views I have taken. I am, therefore, of opinion, that the plaintiffs are entitled to recover from the defendants the full amount of the bills they have declared upon, together with interest from the periods of their respective demands.

WM. DRAYTON.

12th May, 1820.

Johnson, Judge, delivered the opinion of the Court:—

The grounds on which this motion rests have been so fully and ably considered in the learned opinion of the Judge who tried the cause, in whose conclusion the Court concur, that the expression of that concurrence is all that is left to the Court. I will remark, however, on the question as to the effect of cutting or severing the note or bill on its negociability—that the practice of cutting them for the purpose of transmitting them by different conveyances, had its origin, unquestionably, in an opinion that it destroyed its negociability; so far, therefore, as usage could have any influence as to legal construction, it favors the conclusion that a severance of the note destroys the negociability. But I am fully satisfied that such is the legal effect both on authority and principle. The motion is discharged.

We concur—

A. NOTT.
E. H. BAY,
J. S. RICHARDSON.

Durkin, for Plaintiff.
Prioleau and *Gadsden*, for Defendant.

THE LATE BAR MEETING.

Boston, Sept. 5.

Yesterday the members of the Bar of this County held their anniversary meeting; on which occasion a discourse was delivered by the honorable Judge Story. The meeting was holden in the Supreme Court Room, and we observed among the persons present on the occasion, besides the gentlemen of the bar of this county, the honorable Mr. Adams, several eminent lawyers from other counties, and a number of gentlemen who have retired from practice in this place.

After a general introduction, in which the learned orator spoke of the present improved state of jurisprudence, compared with that of former times, he introduced the particular subject of his discourse, by saying that he should offer some considerations on the past and present state of the common law, and suggest some hints as to its future prospects in our country, and the sources from which any probable improvements must be derived. He took a rapid review of the history of the common law in England, which he considered as divided into three epochs; the first extending from the reign of William the Conqueror to the Reformation, the second coming down to the date of the Revolution, and the third from that era to our own times. In this review he traced the progress of improvement, and bestowed his tribute of praise upon the great luminaries by whose labors that improvement was from time to time effected. He proceeded to take a view of the jurisprudence of this country, and the remarkable progress it has made in all parts of the Union, since the war of independence. He remarked upon the peculiar condition in which the jurisprudence of this country is placed, in consequence of the common derivation of the law from a single source, and its being at the same time modified in twenty-four independent states, by so many distinct bodies of statutes, and the adjudications of so many independent courts. He proceeded to point out at some length, some of the most striking circumstances of difference, or coincidence, in the law of the several states. These he considered under distinct heads; such as the laws for regulating the transfer of property—the commercial law—the remedies for trying land titles—structure of land titles—the existence of slavery in some of the states—and the exercise of the equity jurisdiction, in different degrees and various forms.—He remarked that, for the reasons which he stated, American jurisprudence could never acquire a homogeneous character; and that he must look to the future for increasing discrepancies. This he said was a consideration of moment to the bar, and of unfavorable tendency. The establishment of the courts of the national government, it was to be hoped, would have a counteracting tendency. The high importance and public nature of questions agitated in these courts, questions of constitutional law, such as concern the law of nations, and the rights and duty of nations, and of the states towards one another—and the doctrines of prize and maritime law, would naturally attract the ambition of some of the ablest lawyers in the different states, with a view both to fame and fortune, and lay the foundation for a character of excellence and professional ability, more various and exalted than has hitherto belonged to any bar under the auspices of the common law.

The learned orator then proceeded to compare the scope of American jurisprudence with that of the English, and to point out in what respects it is more narrow, and in what more comprehensive. The whole ecclesiastical law of England is with us obselete, as well as that of the feudal services and tenures, and various other of the most artificial and difficult branches of the common law. In place of these departments of law which we have lost, we have acquired others of great importance and dignity; the right of deciding on questions of constitutional law the nature and importance of which the learned Judge expounded with great force and eloquence.

In looking to the future prospects of the jurisprudence of this country, he suggestsed that the principal improvements must arise from a more thorough and deep laid judicial education; and to shew that there is great room for improvement in the elementary parts of legal education, he alluded to the proficiency of the English bar in the forms and doctrines of special pleading, compared with the unskilfulness of our bar in these respects. He pointed to other sources of improvement, and among them, named the study of the doctrines of Courts of Equity; that of the foreign maritime law: of the civil law; and of the law of nations. He described our jurisprudence as peculiarly susceptible of improvement through the study of the law of other countries, and from adopting, in new cases, such principles of the maritime and civil law as are adapted to our wants. He adverted to the embarrassments which the lawyer must encounter from the mass of judicial authorities, which is every year increasing, and hinted at some of the possible remedies for the evil.

After the discourse, the bar dined together at Concert-Hall; where, among others, the following toasts were drank:

By the Hon. *William Sullivan, President of the Association.*—The members of our fraternity—may they find themselves in honorable and profitable opposition daily; but find one day in every year to be all on the same side.

By the Hon. Mr. *Quincy.*—The light of science in the bar—the strength of independence on the bench—and the disposition to honor and reward both among the people.

By *William J. Spooner*, Esq. Secretary of the Association.—Good fellowship among the Bar—may it be liable to no *process*, but that of "*ne exeat regno.*"

By the Hon. Judge *Story.*—*The Bar of Suffolk.*—May it continue to be as spotless in honor as it is splendid in talents.

By the Hon. Mr. *Lowell.*—The surest token of public prosperity—a full docket, and a prompt administration of justice.

By the Hon. *J. Q. Adams.*—Deep drafts from the deep well; like those with which we have been this day refreshed.

By the Hon. *J. Pickering.*—The Holy Alliance of the civil, common, and American law.

The profession of the Law.—May it ever afford lawyers ready to defend, and judges bold to declare the constitutional rights of the citizen.

Our Country.—May she never be obliged to bring *trover* for her lost honor, nor give a *replevin bond* for her liberty.

The Supreme Court of the U. States.—"Nil desperandum—Teucro duce, et auspice Teucro."

The golden age of the Law.—May the bar partake largely of the quality of the age.

The prospects of the young Lawyer.—They are a *contingent remainder*, and he needs a *particular estate* to support it.

"The gladsome light of jurisprudence"—May it cheer the honest lawyer, and prove a will-o'-the-wisp, to the pettifogger.

The political Arithmetic of the United States—*Addition* to her resources. *Subtraction* to party spirit—May the *Multiplication* of her numbers never induce her to make the States the subject of *Simple* or *Compound Division*—but the rights of each part being measured out by the rule of *Simple Proportion*—may her citizens enjoy *Single Fellowship* among themselves, and be able to bestow *Vulgar Fractions* on their enemies.

The Orator of the day—may we have as good a *Story* every year.

MILITIA LAWS.

JUST PUBLISHED,
At J. Gales's Store, Raleigh,
Price 50 Cents,

A Complete Collection of the Militia Laws of North Carolina, brought up to the present time, and revised by the Gentlemen appointed by the Legislature to revise the Laws of the State.

July 27.

CHINA GLASS AND EARTHEN WARE.

DUMMER & HEMPSTED,

NEXT door to Messrs Lynch & Cuthet have received per ship Lucy, arrived at New-York, their Fall Assortment of the above articles, comprizing every article in the line; which will be sold low at wholesale.

Petersburg, Aug. 28. 1821. 45—2m

DR. RELFE'S ASTHMATIC PILLS.

The following extraordinary Cures are the best recommendations to Dr. Relfe's Asthmatic Pills.

A Lady of Framingham, was severely afflicted with cough, spitting of blood and general debility, on taking 2 boxes of these pills and 1 box of Dr. Relfe's Antibillious Pills, was restored to perfect health.

A Lady of Camden, Me. (witness Oakes Perry, Esq.) was considered in a confirmed and family consumption, two of her sisters having died of the same complaint a short time previous, resigned as past relief, having been attended by the most eminent of the faculty, on taking 1 box of these pills was restored to perfect health, it is now 10 months since.

A Lady of Hampton, Me. was seriously afflicted with consumption, confined to her bed, deprived of sleep, attended with universal debility, when having taken leave of her friends, as past relief, and expected to die in a few hours, by the happy interference of a friend she was induced to try these oils, on taking the first dose, she fell into a gentle slumber, awoke refreshed, and before the box was finished she was restored to health.

A Lady of North End, Boston, from a violent cold, had lost the use of her lower extremities, could not be moved without assistanse, and otherwise in bad health, was restored to health by the use of these pills, and using Dr. Jebb's Liniment—She was resigned as past relief.

Mr. ——, a mason of Boston, was severely afflicted for 3 years with what he described a "strained stomach;" which threatened a rapid consumption, attended with much debility, was cured by 2 boxes of these pills, and 1 box of Dr. Relfe's Antibillious Pills.

An elderly Lady of Boston, was afflicted 16 years with a most violent cough, difficulty of breathing, wheezing, &c. would often cough till black in the face, and expecting to be suffocated every instant, could not lay down in her bed for 4 years, seldom slept but at short intervals, was restored to perfect health by taking only 3 boxes. *Her sleep was restored on the second night.*

These Pills give instant ease in all coughs, colds, asthmas, difficulty of breathing, wheezing, tightness of the chest, consumption, pain in the side, spitting of blood, chillness and shiverings, the forerunners of fevers, &c. Common colds are removed in a few hours. The aged will experience relief equally agreeable and instantaneous, even when the lungs are affected. ☞ *Ask for* "Dr. Relfe's Asthmatic Pills." *One box, containing 12 pills frequently effects a cure. To prevent imposition*, the outside printed wrapper is signed by the sole proprietor, "W. T. Conway." These pills are prepared and sold wholesale by W. T. CONWAY, Chemist, No. 24 Franklin place, Boston: price one dollar,—or six boxes for five dollars; and retail by special appointment by William Peck, Raleigh; Messrs. Hall, Newbern; Hobby, Augusta; Clancy, Hillsborough, McBee & Reinhart, Lincolnton, J. & E. Wheeler, Murfreesboro', Telfair, Greenville, and most Druggists & Booksellers of respectability—Also, by most Post-Masters, throughout the United States. Where also may be had all those *justly esteemed and highly approved Medicines,*" *prepared by* "W. T. Conway." A large discount to country Physicians, Traders, &c.

Aug. 13, 1821.