

Syllabus.

Under the laws of Louisiana the damages upon protest of foreign bills of exchange is ten per cent. on the principal sum specified in the bills. Suit was brought against the receiver of the bank to recover the charges for protest and the ten per cent. damages. Judgment was given against the receiver for the expenses of protest, but in his favor on the claim for damages. This writ of error was sued out by Hambro & Son to reverse that judgment so far as it was in favor of the receiver.

In our opinion the judgment was clearly right. The protested bills are the property of the bank, subject in the hands of Hambro & Son to their lien as bankers for the security of the balance due them on general account. All moneys collected by Hambro & Son on the bills, whether it be for principal, interest, or damages, must be passed as soon as collected to the credit of the bank. Hambro & Son are the holders of the bills, but in no legal sense the owners, though it may be their lien is for more than can be collected from the drawers or drawees. Clearly the law does not require the bank to pay the damages, when the payment, if made, must be passed to its own credit on the books of its collecting agents. That would be the operative effect of such a judgment as is now asked for.

Judgment affirmed.

AURRECOECHEA *v.* BANGS.

IN ERROR TO THE SUPREME COURT OF CALIFORNIA.

Submitted January 4th, 1884.—Decided January 21st, 1884.

Practice.

When counsel stipulate to submit a case, fixing a time for filing of argument by the plaintiff, and a time subsequently for filing the defendant's argument, and a time still later for plaintiff's reply, and the plaintiff failing to file an argument, the defendant files one within the time allowed to him and the plaintiff files no reply, the court will take the case as submitted under the rule.

Stipulations between counsel for submitting suits, when filed, cannot be withdrawn without consent of both parties. *Muller v. Dows*, 94 U. S. 277, approved and followed.

Opinion of the Court.

No appearance for plaintiff in error.

Mr. A. Chester for defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The counsel on both sides stipulated in writing to submit this case under Rule 20. The stipulation bears date November 15th, 1883. It was filed here on the 12th of December. By its terms the counsel for the plaintiff in error was to have until the 12th of December to serve and file his printed argument; the counsel for the defendant in error until the 25th of December to serve and file his printed argument; and the counsel for the plaintiff in error ten days to reply. No argument has been filed in behalf of the plaintiff in error, but one was filed in behalf of the defendant in error on the 15th of December. On the last day for submitting cases under the rule, which was after the expiration of the time the plaintiff in error was entitled to for his reply, the defendant in error submitted the case under the stipulation.

In *Muller v. Dows*, 94 U. S. 277, it was decided that stipulations of the kind between counsel might be enforced, and that they could not be withdrawn by either party without the consent of the other, except by leave of the court upon cause shown. We, therefore, take the case as submitted under the rule, although there is no argument for the plaintiff in error, and without passing specially upon the several assignments of error, which were returned with the transcript in accordance with the requirements of section 997 of the Revised Statutes,

Affirm the judgment.