Statement of the case.

SWEENY ET AL. *v.* EASTER.

1. The indorsement of negotiable paper with the words "*for collection,*" restrains its negotiability; and a party who has thus indorsed it, is competent to prove that he was not the owner of it, and did not mean to give title to it or to its proceeds when collected.
2. Where a banker, having mutual dealings with another banker, is in the habit of transmitting to him in the usual course of business negotiable paper for collection, the collection being in fact sometimes on account of the transmitting banker himself, and sometimes on account of his customers, and fails, owing his corresponding banker a balance in general account,—

   I. Such corresponding banker cannot retain to answer that balance any paper so transmitted for collection, and really belonging to third persons, if he knew it was sent for collection merely.

   II. Neither can he retain it, if he did not know that it was so sent, unless he have given credit to the transmitting banker, or have suffered a balance to remain in his hands, to be met by the paper transmitted or expected to be transmitted in the usual course of dealings between them.

   III. But if the receiving banker have treated the transmitting banker as owner of the transmitted paper, and had no notice to the contrary, and upon the credit of such remittances, made or anticipated in the usual course of dealing between them, balances were from time to time suffered to remain in the hands of the transmitting and now failed banker, to be met by proceeds of such negotiable paper transmitted, then the receiving banker is entitled to retain the paper or its proceeds against the banker sending it, for the balance of account due him, the receiving banker aforesaid.
3. A charge which lays down the law in this way upon the case supposed, is correct; and as respects the knowledge of or notice to the receiving banker, it is unimportant from what source he have derived it; nor need instructions in such a case as is above supposed be given on that point.
4. Instructions are rightly withheld, which would refer to the jury the interpretation of the indorsement on negotiable paper; and leave them to determine a case, special in its circumstances, on the face of the paper and the custom of bankers generally; which, for example, in a case where paper was indorsed "*for collection,*" and where, by the course of dealing between the parties, paper was frequently sent for collection *only*, would leave the jury to find that title passed generally, because bankers testified that, by the *general custom and usage of bankers*, negotiable paper, indorsed as mentioned, and transmitted for collection, would be held and treated as the property of the banker transmitting it.

EASTER & Co. brought trover, in the Circuit Court for the District of Columbia, against Sweeny, Rittenhouse, Fant

& Co., bankers of Washington City, to recover the value of certain negotiable *notes* belonging to them, the first named persons, and which they had indorsed in blank and placed in the hands of Harris & Sons, bankers of Baltimore, for *collection and for no other purpose.* Harris & Sons forwarded the notes to Sweeny, Rittenhouse, Fant & Co., who were their correspondents in Washington, having first indorsed them thus:

"Pay Sweeny, R., F. & Co., or order, *for collection.*

SAM'L HARRIS & SONS."

Before the notes fell due, Harris & Sons failed, owing Sweeny, Rittenhouse, Fant & Co., a balance in general account. The last-named house claimed accordingly to hold this paper, forwarded to them as before said, to cover whatever sum might be found due on a settlement. And this was the defence to the suit.

At the trial of the cause the plaintiffs offered R. H. Harris, *one of the firm of Harris & Sons*, to prove that the notes in controversy were the property of plaintiffs, and that they had deposited them with Harris & Sons for *collection only.* The defendants objected to the witness on the ground of his being one of the indorsers. The court overruled the exception.

On being held competent, the witness testified that the plaintiffs, after their indorsement in blank, continued to be the owners of the notes, and that such indorsement was merely to enable Harris & Sons to collect; that Harris & Sons, in remitting discounted paper, having time to run, to the defendants, indorsed the same generally, "*Pay to the order of,*" without saying, "*for collection,*" and that where paper was not discounted, but deposited for collection, it was the practice of Harris & Sons to notify to the defendants, either by a mark on the paper or by the letter of advice, not to protest the same, and that the private transactions between Harris & Sons and the defendants were kept distinct from their business as collection agents, and were carried on by Harris & Sons in separate letter-books.

On cross-examination he testified, that this practice of Harris

& Sons, of distinguishing in transmitting paper to the defendants, was *not uniform*, but depended on the wish of the customer depositing the paper not discounted, and that it extended only to paper having time to run, and did not apply to checks, or sight drafts, or other cash paper, as to which the business was managed as if Harris & Sons were the absolute owners of the paper; and that said practice *was only the private practice of Harris & Sons, and that witness never informed defendants of the same, nor did he know they were ever informed thereof; nor, so far as he knows, did they ever have any information as to the practice of Harris & Sons of keeping distinct the business relating to discounted time paper and to time paper belonging to customers, by the use of separate letter-books, or otherwise, as testified by him.*

The defendants then proved that for about two years prior to the date of these transactions, there had been mutual and extensive dealings between them and Harris & Sons; that Harris & Sons transmitted, from time to time, to the defendants, negotiable paper for collection; and that, by the uniform course of dealing between the parties, Harris & Sons were treated and dealt with as the owners of the paper so transmitted; that accounts current were kept by the defendants, in which the proceeds of such paper were, when received, credited to said Harris & Sons, and they were charged with all expenses; and that accounts were transmitted monthly to said Harris & Sons, and acquiesced in by them; that upon the credit of such negotiable paper so transmitted or expected in the ordinary course of business, and of such course of dealings, large drafts were drawn from time to time by Harris & Sons, and paid by the latter, and that, upon such credit, large ascertained balances were allowed to remain in the hands of said Harris & Sons, to be met by the proceeds of such negotiable paper; and that, in all respects, the paper so transmitted was regarded, treated, and dealt with by the defendants, and said Harris & Sons, as the property of the latter; and that a similar course of dealing obtained in regard to negotiable paper transmitted by defendants to said Harris & Sons; that the notes in controversy

were regarded, and dealt with as the property of Harris & Sons, and that the defendants had no notice or knowledge, until after the insolvency, that this paper was not their property, or that the plaintiffs had any interest in it; and that the balance due the defendants on general account, at the time of the insolvency, had been suffered to remain undrawn, on the faith and credit of the paper in controversy, and the course of dealing aforesaid. The defendants further proved that Harris & Sons, at a date specified, and about three months before the failure, when there was a balance against them, on general account, of $3326.94, had drawn on the defendants for $244.08, *the defendants being then the holders of a large amount of negotiable paper, indorsed and transmitted in the same manner as the notes in controversy, and among it certain notes, indorsed by the plaintiffs in blank, and transmitted in a similar manner to the notes in controversy.* And the defendants offered evidence, by witnesses largely engaged in the business of banking, that by the general custom and usage of bankers, negotiable paper transmitted and indorsed as the notes in controversy, would be held and treated as the property of the bankers transmitting them.

The court instructed the jury as follows:

"1. If Sweeny, Rittenhouse, Fant & Co., the defendants in this action, at the time of the mutual dealings between them and S. Harris & Sons, had notice that Harris & Sons had no interest in the notes in question, and that they transmitted them for collection merely as agents, then the defendants are not entitled to retain against the plaintiffs for the general balance of their account with S. Harris & Sons.

"2. And if the defendants had *not* notice that Harris & Sons were merely agents, but regarded and treated them as the owners of the paper transmitted, yet the defendants are *not* entitled to retain against the real owners, *unless* credit was given to Harris & Sons, or balances suffered to remain in their hands to be met by the negotiable paper transmitted, or expected to be transmitted, in the usual course of dealing between them.

"3. But if the defendants regarded and treated Harris & Sons as the owners of the negotiable paper which they transmitted for collection, and had no notice to the contrary, and upon the cre-

dit of such remittances made, or anticipated, in the usual course of dealing between them, balances were from time to time suffered to remain in the hands of Harris & Sons, to be met by the proceeds of such negotiable paper, then the defendants are entitled to retain against the plaintiffs for the balance of account due from Sam. Harris & Sons."

No exception was taken by the defendants to these instructions; but they prayed the following *additional* instructions, to wit:

"That the private practice of Harris & Sons, in transmitting negotiable paper having time to run, whereby they intended to distinguish between negotiable paper discounted by them and that received for collection, as given in evidence by the witness Harris, was not competent to charge the defendants with notice as to whether the paper in controversy was discounted by and belonged to the said Harris & Sons, or was transmitted for collection, unless the jury shall find from all the evidence in the case, that the defendants had knowledge of such private practice. And that in *the absence of such knowledge the defendants were authorized to treat such paper according to what it purported on its face to be, and the general custom of bankers* in the District of Columbia and elsewhere offered in evidence."

This instruction the court declined to give. The jury found for the plaintiff.

Two exceptions were taken in the case.

The first, to the admission of R. H. Harris, one of the firm which indorsed the paper, to prove what he did prove.

The second, to the refusal of the court to give the *additional* instruction asked for.

Mr. Davidge, for the plaintiff in error, contended:

1. That the effect of the testimony of R. H. Harris was to vary the legal import of the paper; a matter which, as the paper was negotiable and he a party to it, he could not do; it being settled in this court that a party to such paper cannot be permitted either to invalidate or contradict it, or to vary its legal import. Upon this point he cited decisions in this court, as follows: *Bank of the United States* v. *Dunn*

(6 Peters, 51); *Bank of the Metropolis* v. *Jones* (8 Id., 12); *Henderson* v. *Anderson* (3 Howard, 73); *Saltmarsh* v. *Tuthill* (13 Id., 229).

2. That the court should have given *additional* instructions to the jury, as prayed, that the private practice of Harris & Sons was of no effect unless the defendants knew of it, &c. The instructions given did not cover the whole case. They related to the facts to be found in support of a verdict for either party; while the instruction asked for and rejected related exclusively to a *rule of evidence* to guide the jury in the ascertainment of one of those facts, to wit, the fact of notice.

Mr. J. H. Bradley, contra:

1. The reason of the rule asserted by the law for rejecting an indorser of negotiable paper, fails. The house to which the witness belonged had not by indorsement assisted to give currency to the notes. They had done the reverse of it by the peculiarity of their indorsement; an indorsement which gave notice to every one that the notes were held and transmitted for collection only. "A *negotiable* bill or note," said Chief Justice Gibson, of Pennsylvania,* "is a courier without luggage. A memorandum to control it, though indorsed *upon it*, would be incorporated with it, and destroy it." The expression here used, "for collection," is luggage, which the note could not carry, and yet remain free. The witness not having assisted to give currency to the paper, but having destroyed the currency, was competent, though he indorsed paper originally negotiable.

2. The instruction refused limits the direction of the court to the fact that the defendants had *knowledge of the private practice* of Harris & Sons, in indorsing paper deposited with them for collection, and excludes every other source of knowledge that the paper claimed by plaintiffs was their property, and never had been the property of Harris & Sons; and asks the court to instruct the jury that in the absence of such knowledge, that is *of the alleged private practice of Harris &*

* Overton *v.* Tyler, 3 Pennsylvania State, 348.

Sons, the defendants had a right to treat such paper according to what it purported on its face, &c.

The court could not have given such an instruction without invading the province of the jury, and determining the weight of the other evidence in the cause.

The court had already submitted the cause to the jury on instructions, not excepted to; and this instruction asks them to segregate a single part of the evidence, and to say that this single part, standing alone, was not sufficient to establish the plaintiffs' right to recover. To have granted this would have been to mislead the jury from the points clearly and precisely prescribed in the instructions previously given.

Mr. Justice MILLER delivered the opinion of the court:*

The first exception was to the admission of R. H. Harris, of the firm of Harris & Sons, as a witness.

Neither that firm nor any of its members were parties to the suit, nor is it pretended that the witness was in any manner interested in the event of it. But it is claimed that because the name of the firm of which he is a partner, is indorsed on the negotiable paper which is the subject-matter of this suit, he cannot, being a party to such paper, be permitted to invalidate, or contradict it, or vary its legal import.

The objection as thus stated embraces two distinct propositions. *First*, that a party to a negotiable instrument shall not be permitted to impeach or render invalid, the paper with which he thus stands connected. *Second*, that he cannot be permitted to contradict or vary the legal import of the original paper, or such indorsement as he may have made on it, by parol testimony.

The latter objection applies to the character of the evidence, without regard to the person offered as a witness, and would be as effectual against testimony from the mouth of a person who had no connection with the paper, as from an indorser or maker of it.

* Mr. Chief Justice Taney and Messrs. Justices Wayne and Grier, being indisposed, were absent.

Opinion of the court.

This is not a suit on the paper, or against any of the parties to it. It is an action of trover, for the wrongful conversion of the paper, in which plaintiffs seek to recover its value. The firm of Harris & Sons sent it to defendants, who were their banking correspondents, for collection; and they made a special indorsement on it, thus: "*Pay Sweeny, R., F. & Co., for collection.* SAM. HARRIS & SONS."

Now, does this testimony of the witness, to the effect that Harris & Sons were not the owners of the paper, and did not sell it to defendants, or intend to give them any lien on, or title to the paper, or its proceeds when collected, contradict or vary the legal import of this indorsement? We cannot see that it does. It rather explains the transaction in perfect conformity with the real meaning and effect of the indorsement. The words "for collection" evidently had a meaning. That meaning was intended to limit the effect which would have been given to the indorsement without them, and warned the party that, contrary to the purpose of a general or blank indorsement, this was not intended to transfer the ownership of the note or its proceeds. If defendants acquired any interest in the paper, it was not by virtue of that indorsement, but by some course of dealing with Harris & Sons, or by some other matter outside of the indorsement. The character of this indorsement also takes the case out of the rule asserted in the first proposition embraced by the exception.

Perhaps no subject connected with commercial paper has been more the subject of controversy, and of opposing and well-balanced judicial decisions, than the proposition here relied on. It was first laid down in the English courts in the case of *Walton* v. *Shelley*,* and afterwards held the other way in *Jordaine* v. *Lashbrooke*.† This court, however, has steadily adhered to the doctrine of *Walton* v. *Shelley*, and we are referred by counsel for plaintiffs in error to our own decisions on this subject in 6 Peters, 51; 8 Peters, 12; 3 Howard, 73; 13 Howard, 229.

The rule propounded in *Walton* v. *Shelley* is, that a person

* 1 Term, 296.

† 7 Id. 601.

who has placed his name on a negotiable paper as a party to it, shall not afterwards, in a suit on such security, be competent as a witness to prove any fact which would tend to impeach or invalidate the instrument to which he has thus given his name. The reason of it is, that it is against good morals and public policy to permit a person who has thus aided in giving currency and circulation to such paper, to testify to facts which would render such paper void, after he has thus imposed it upon the public as valid, with all the sanction which his name could give it.*

The indorsement in the present case was not intended to give currency or circulation to the paper. Its effect was just the reverse. It prevented the further circulation of the paper, and its effect was limited to an authority to collect it. No principle of public policy would be violated, nor any fraud upon innocent holders of the paper would be perpetrated, by permitting the parties who made that indorsement to testify to facts which are in perfect harmony with its language and its intent.

Again, the testimony does not tend to invalidate the paper, or any indorsement on it. The defendants could not have recovered of Harris & Sons on that indorsement if the notes had been protested in their hands; and they were therefore deprived by that testimony of no right which the indorsement gave them; nor was such indorsement impeached or impaired by the testimony.

This exception must be overruled.

The second exception was taken to the refusal of the court to grant an instruction to the jury prayed by plaintiffs in error. The instruction asked is as follows:

"And the private practice of Harris & Sons, in transmitting negotiable paper having time to run, whereby they intended to distinguish between negotiable paper discounted by them and that received for collection, as given in evidence by the witness Harris, is not competent to charge the defendants with notice as to whether the paper in controversy was

* Walton *v.* Shelley, 1 Term, 296; Bank of United States *v.* Dunn, 6 Peters, 57; Bank of the Metropolis *v.* Jones, 8 Id., 16.

discounted by and belonged to the said Harris & Sons, or was transmitted for collection, unless the jury shall find, from all the evidence in the case, that the defendants had knowledge of such private practice; and in the absence of such knowledge, the defendants were authorized to treat such paper according to what it purported on its face, and the general custom of bankers in the District of Columbia and elsewhere, offered in evidence."

This prayer contains two propositions, the one relating to the knowledge of defendants of certain private modes of doing business of Harris & Sons; and the other, to what the jury were authorized to infer, from certain other circumstances, in the absence of such knowledge on the part of defendants.

The instructions which were given by the court, and which are in the record, were full and sound on the first of these propositions, and we think were all that was necessary on both branches of the prayer. But the second branch of the instruction asked is objectionable, because it referred to the jury the interpretation of the indorsement on the paper, and also required of them to determine the case on the face of the paper, and the custom of bankers alone, without reference to the special facts proven in regard to the course of dealing between defendants and Harris & Sons. The charge of the court left all these matters of fact to the jury for their consideration, after a full and fair statement of all the principles of law which were necessary to a sound verdict.

We see no error in the record, and therefore the judgment of the Circuit Court is

AFFIRMED WITH COSTS.

GELPCKE ET AL. *v.* THE CITY OF DUBUQUE.

1. By a series of decisions of the Supreme Court of Iowa prior to that, A.D. 1859, in *The State of Iowa, ex relatione*, v. *The County of Wapello* (13 Iowa, 388), the right of the legislature of that State to authorize municipal corporations to subscribe to railroads extending beyond the limits of the city or county, and to issue bonds accordingly, was settled in favor of the right; and those decisions, meeting with the approbation