Statement of the case.

WARD *v.* SMITH.

1. The designation of a bank as the place of payment of a bond, imports a stipulation that its holder will have it at the bank when due to receive payment, and that the obligor will produce there the funds to pay it.
2. If the obligor is at the bank, at the maturity of the bond, with the necessary funds to pay it, he so far satisfies the contract that he cannot be made responsible for any future damages, either as costs of suit or interest, for delay.
3. Where an instrument payable at a bank is lodged with the bank for collection, the bank becomes the agent of the payee to receive payment.
4. Where such instrument is not lodged with the bank, whatever the bank receives from the maker to apply upon the instrument, it receives as his agent, not as the agent of the payee.
5. Without special authority, an agent can only receive payment of the debt due his principal in the legal currency of the country, or in bills which pass as money at their par value by the common consent of the community.
6. The doctrine that bank bills are a good tender, unless objected to at the time, on the ground that they are not money, only applies to current bills, which are redeemed at the counter of the bank on presentation, and pass at par value in business transactions at the place where offered.
7. If the rule that interest is not recoverable on debts between alien enemies during war of their respective countries, is applicable to debts between citizens of States in rebellion and citizens of States adhering to the National government in the late civil war, it can only apply when the money is to be paid to the belligerent directly; it cannot apply when there is a known agent appointed to receive the money, resident within the same jurisdiction with the debtor. In this latter case the debt will draw interest.

ERROR to the Circuit Court of Maryland.

In August, 1860, William Ward, a resident of Alexandria in Virginia, purchased of one Smith, of the same place, then administrator of the estate of Aaron Leggett, deceased, certain real property situated in the State of Virginia, and gave him for the consideration-money three joint and several bonds of himself and Francis Ward. These bonds, each of which was for a sum exceeding four thousand dollars, bore date of the 22d of that month, payable, with interest, in six, twelve, and eighteen months after date, "*at the office of discount and deposit of the Farmers' Bank of Virginia, at Alexandria.*"

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Statement of the case.

In February, 1861, the first bond was deposited at the bank designated for collection. At the time there was indorsed upon it a credit of over five hundred dollars; and it was admitted that, subsequently, the further sum of twenty-five hundred dollars was received by Smith, and that the amount of certain taxes on the estate purchased, paid by the Wards, was to be deducted.

In May, 1861, Smith left Alexandria, where he then resided, and went to Prince William County, Virginia, and remained within the Confederate military lines during the continuance of the civil war. He took with him the other two bonds, which were never deposited at the Farmers' Bank for collection. Whilst he was thus absent from Alexandria, William Ward deposited with the bank to his credit at different times, between June, 1861, and April, 1862, various sums, in notes of different banks of Virginia, the nominal amount of which exceeded by several thousand dollars the balance due on the first bond. These notes were at a discount at the times they were deposited, varying from eleven to twenty-three per cent. The cashier of the bank indorsed the several sums thus received as credits on the first bond; but he testified that he made the indorsement without the knowledge or request of Smith. It was not until June, 1865, that Smith was informed of the deposits to his credit, and he at once refused to sanction the transaction and accept the deposits, and gave notice to the cashier of the bank and to the Wards, obligees in the bond, of his refusal. The cashier thereupon erased the indorsements made by him on the bond.

Smith now brought the present action upon the three bonds to recover their entire amount, less the sum credited on the first bond when it was deposited, the sum of twenty-five hundred dollars, subsequently received by the plaintiff, and the amount of the taxes paid by the defendants on the estate purchased.

The court below instructed the jury, that if they found that the defendants executed the bonds, the plaintiff was entitled to recover their amounts, less the credit indorsed on the first

one, and the taxes paid by defendants, and the subsequent payment to the plaintiff with interest on the same. The plaintiff recovered, and the defendants brought the case to this court by writ of error.

Messrs. Brown and F. W. Brune, for the plaintiffs in error:

1. When securities are left with a bank for collection, the bank is, *ipso facto*, made the agent of the payee, to receive payment thereof. It is the agent of the payee, not of the payer.*

2. The bank may release the payer by receiving payment in gold, silver, copper, drafts, or checks on other banks or private bankers, bank notes of its own or other banks, circulating at par or below par.

It matters not what may be the particular kind or forms of money accepted by the bank, its relation of agent towards its principal and the debtor ceases the moment the funds so received are mingled with its own funds, and credit is given on its books for the amount so collected as cash.

The relationship of debtor and creditor, from that moment, subsists between the bank and its former principal, and the bank is liable for the full amount so credited.†

3. It was stipulated in the bonds that they should be payable at the Farmers' Bank; and it was thus made part of the contract that all the bonds should be deposited in that bank by the payee, Smith, at maturity, or before; so that the obligors might be able to make payment of them at the bank, according to the law and usage of banks, in making collections and receiving payments.‡

It is not pretended that the payee, Smith, gave any instructions to the bank, or made any communication to the

* Marine Bank *v.* Fulton Bank, 2 Wallace, 252.

† Wallace *v.* McConnell, 13 Peters, 136, 150; Bank of the United States *v.* Bank of Georgia, 10 Wheaton, 333, 341, 344, 346, 347; Levy *v.* Bank of the United States, 4 Dallas, 234; Marine Bank *v.* Birney, 28 Illinois, 90; Same *v.* Rushmore, Id. 463; Tinkham *v.* Heyworth, 31 Illinois, 522.

‡ Fitler *v.* Beckley, 2 Watts and Sergeant, 458, 462; Brabston *v.* Gibson, 9 Howard, 263, 279.

obligors, attempting to modify or qualify the general law and practice of banks in reference to such matters.

4. The defendants were entitled to have credited to them the notes they deposited at the bank for the plaintiff, either at their par or actual value; and the court erred in allowing them only the three previous credits mentioned in its instruction; and in allowing plaintiff interest on the entire balance during the war.*

Messrs. R. J. and J. L. Brent, contra.

Mr. Justice FIELD, after stating the case, delivered the opinion of the court, as follows:

The defendants claim that they are entitled to have the amounts they deposited, at the Farmers' Bank in Alexandria, credited to them on the bonds in suit, and allowed as a set-off to the demand of the plaintiff. They make this claim upon these grounds: that by the provision in the bonds, making them payable at the Farmers' Bank, the parties contracted that the bonds should be deposited there for collection either before or at maturity; that the bank was thereby constituted, whether the instruments were or were not deposited with it, the agent of the plaintiff for their collection; and that as such agent it could receive in payment, equally with gold and silver, the notes of any banks, whether circulating at par or below par, and discharge the obligors.

We do not state these grounds in the precise language of counsel, but we state them substantially.

It is undoubtedly true that the designation of the place of payment in the bonds imported a stipulation that their holder should have them at the bank, when due, to receive payment, and that the obligors would produce there the

* Jackson Ins. Co. *v.* Stewart, 15 American Law Reg. (6 New Series), 732, and note, 735; Tucker *v.* Watson, Id. 220; Brewer *v.* Hastie, 3 Call, 22; Hoare *v.* Allen, 2 Dallas, 102; Foxcraft *v.* Nagle, Id. 132; Letter of Mr. Jefferson, 1 American State Papers, pp. 257, 304–312.

funds to pay them. It was inserted for the mutual convenience of the parties. And it is the general usage in such cases for the holder of the instrument to lodge it with the bank for collection, and the party bound for its payment can call there and take it up. If the instrument be not there lodged, and the obligor is there at its maturity with the necessary funds to pay it, he so far satisfies the contract that he cannot be made responsible for any future damages, either as costs of suit or interest, for delay. When the instrument is lodged with the bank for collection, the bank becomes the agent of the payee or obligee to receive payment. The agency extends no further, and without special authority an agent can only receive payment of the debt due his principal in the legal currency of the country, or in bills which pass as money at their par value by the common consent of the community. In the case at bar only one bond was deposited with the Farmers' Bank. That institution, therefore, was only agent of the payee for its collection. It had no authority to receive payment of the other bonds for him or on his account. Whatever it may have received from the obligors to be applied on the other bonds, it received as their agent, not as the agent of the obligee. If the notes have depreciated since in its possession, the loss must be adjusted between the bank and the depositors; it cannot fall upon the holder of the bonds.

But even as agent of the payee of the first bond, the bank was not authorized to receive in its payment depreciated notes of the banks of Virginia. The fact that those notes constituted the principal currency in which the ordinary transactions of business were conducted in Alexandria, cannot alter the law. The notes were not a legal tender for the debt, nor could they have been sold for the amount due in legal currency. The doctrine that bank bills are a good tender, unless objected to at the time, on the ground that they are not money, only applies to current bills, which are redeemed at the counter of the bank on presentation, and pass at par value in business transactions at the place where offered. Notes not thus current at their par value, nor re-

deemable on presentation, are not a good tender to principal or agent, whether they are objected to at the time or not.

In *Ontario Bank* v. *Lightbody*,* it was held that the payment of a check in the bill of a bank which had previously suspended was not a satisfaction of the debt, though the suspension was unknown by either of the parties, and the bill was current at the time, the court observing that the bills of banks could only be considered and treated as money so long as they are redeemed by the bank in specie.

That the power of a collecting agent by the general law is limited to receiving for the debt of his principal that which the law declares to be a legal tender, or which is by common consent considered and treated as money, and passes as such at par, is established by all the authorities. The only condition they impose upon the principal, if anything else is received by his agent, is, that he shall inform the debtor that he refuses to sanction the unauthorized transaction within a reasonable period after it is brought to his knowledge.†

The objection that the bonds did not draw interest pending the civil war is not tenable. The defendant Ward, who purchased the land, was the principal debtor, and he resided within the lines of the Union forces, and the bonds were there payable. It is not necessary to consider here whether the rule that interest is not recoverable on debts between alien enemies, during war of their respective countries, is applicable to debts between citizens of States in rebellion and citizens of States adhering to the National government in the late civil war. That rule can only apply when the money is to be paid to the belligerent directly. When an agent appointed to receive the money resides within the same jurisdiction with the debtor, the latter cannot justify his refusal to pay the demand, and, of course, the interest which it bears. It does not follow that the agent, if he re-

* 13 Wendell, 105.

† Story on Promissory Notes, § 115, 389; Graydon *v.* Patterson, 13 Iowa, 256; Ward *v.* Evans, 2 Lord Raymond, 930; Howard *v.* Chapman, 4 Carrington & Payne, 508.

ceive the money, will violate the law by remitting it to his alien principal. "The rule," says Mr. Justice Washington, in *Conn* v. *Penn*, "can never apply in cases where the creditor, although a subject of the enemy, remains in the country of the debtor, or has a known agent there authorized to receive the debt, because the payment to such creditor or his agent could in no respect be construed into a violation of the duties imposed by a state of war upon the debtor. The payment in such cases is not made to an enemy, and it is no objection that the agent may possibly remit the money to his principal. If he should do so, the offence is imputable to him, and not to the person paying him the money."* Nor can the rule apply when one of several joint debtors resides within the same country with the creditor, or with the known agent of the creditor. It was so held in *Paul* v. *Christie*.†

Here the principal debtor resided, and the agent of the creditor for the collection of the first bond was situated within the Federal lines and jurisdiction. No rule respecting intercourse with the enemy could apply as between Marbury, the cashier of the bank at Alexandria, and Ward, the principal debtor residing at the same place.

The principal debtor being within the Union lines could have protected himself against the running of interest on the other two bonds, by attending on their maturity at the bank, where they were made payable, with the funds necessary to pay them. If the creditor within the Confederate lines had not in that event an agent present to receive payment and surrender the bonds, he would have lost the right to claim subsequent interest.

JUDGMENT AFFIRMED.

---

* 1 Peters's Circuit Court, 496; Denniston *v.* Imbrie, 3 Washington do. 396.

† 4 Harris and McHenry, 161.