

U. S. Rep.]

WARD V. SMITH.

[U. S. Rep.]

of the country, or in bills which pass as money at their par value by the common consent of the community. The doctrine that bank bills are a good tender unless objected to at the time, only applies to current bills which are redeemed at the counter of the bank, and pass at par value in business transactions in the place where offered. Payment of a check in the bills of a suspended bank, not known to the parties to be suspended, is not a satisfaction.

Where the debtor and the creditor's known agent to receive the money, reside in the same jurisdiction, the fact that the creditor is a citizen of a power at war with the debtor's government, and resident in the hostile state, does not absolve the debtor from his obligation to pay, and if he does not, he is liable for interest.

In error to the Circuit Court of the United States for the District of Maryland

In August 1860, the plaintiff in error, William Ward, purchased of Smith certain property in Virginia, and gave him for the consideration-money the three joint and several bonds of himself and co-defendant, upon which the present action was brought. These bonds, each for a sum exceeding four thousand dollars, bear 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."

In February 1861 the first bond was deposited at the bank designated for collection. At the time there was endorsed 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 Ward, was to be deducted.

In May 1861, Smith left Alexandria, 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, 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 endorsed the several sums thus received as credits on the first bond; but he testifies that he made the endorsement without the knowledge or request of the plaintiff. It was not until June 1865 that the plaintiff 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 the defendants of his refusal. The cashier thereupon erased the indorsements made by him on the bond.

The defendants (plaintiffs in error) claimed that they were entitled to have the amounts thus deposited and endorsed credited to them on the bonds, and allowed as a set-off to the demand of the plaintiff. They made this claim upon these grounds: That by the provision in the bonds, making them payable at the Farmers' Bank, in Alexandria, 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.

*A. G. Browne and F. W. Brune*, for plaintiffs in error.

*R. J. & J. L. Brent*, for defendants in error.

FIELD, J. [after reciting the facts.—It is undoubt dly 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 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 authorised to receive in its payment depreciated notes of the banks of Virginia. The fact that these 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 redeemable 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*, 13 Wend. 105, it was held that the payment of a check in the bills 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