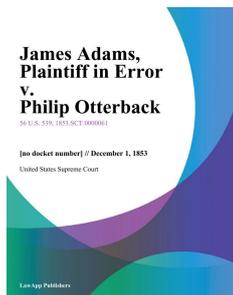


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Author: United States Supreme Court

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Mr. Lawrence, for the plaintiff in error, contended that the instruction was erroneous. It is difficult to understand the ground upon which the instruction was bottomed; whether, in the opinion of the court, the plaintiff could not recover admitting the custom to be proved, because the plaintiffs had not conformed to it; or whether, in the opinion of the court, the custom itself was not, as a fact, proved by the evidence; or whether, lastly, it was not legally competent for the bank to change an ancient custom and introduce a new one. Upon one or other of these grounds the instruction must have been given, and upon either of them it was erroneous. 1. That the court may instruct the jury that the plaintiff cannot recover against the indorser of a promissory note if they believe the evidence, and that evidence proves a particular custom, and at the same time proves that the plaintiff did not conform to that custom, we are not called upon to deny, because such is not the case here. The evidence clearly proves that the demand of payment and the notice of protest were in conformity with the altered usage, if that altered usage is itself established.

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