Lindenberger v. Beall.

THIS COURT were unanimously of opinion, that, by the general law-merchant, notice of non-payment, given to the drawer, on the last day of grace, after a demand upon the acceptor on the same day (and Saturday, in this case, was the last day of grace, the next day being Sunday), was sufficient to charge the drawer; and that the notice in this case given to the drawer, by putting the same into the post-office, was good.

Judgment affirmed.

---

*LINDENBERGER *et al. v.* BEALL. [*104

Promissory notes.—Notice of non-payment.

After demand of the maker of a note, on the third day of grace, notice to the indorser on the same day, is sufficient by the general law-merchant.

Evidence of a letter, containing notice, having been put into the post-office, directed to the indorser, at his place of residence, is sufficient proof of the notice, to be left to the jury, and it is unnecessary to give notice to the defendant, to produce the letter, before such evidence can be admitted.

ERROR to the Circuit Court for the District of Columbia. *Assumpsit* against the defendant (Beall), as indorser of a promissory note, drawn by one Tunis Craven, dated at Baltimore, October 22d, 1811, in favor of the defendant, and by him indorsed to the plaintiffs, for $191.17, negotiable at the bank of Washington, payable six months after date.

At the trial, the note was given in evidence, and the handwriting of the maker and indorser admitted. The plaintiffs further proved, by a notary, that the note was, by him, demanded of the maker, on Saturday the 25th of April 1812, being the day on which it became payable, that is, the last day of grace. And not being paid, notice of the non-payment thereof was inclosed in a letter, addressed to the defendant, at the city of Washington, and put into the post-office at Georgetown. The notary testified, that he had no recollection of these facts, *and only know them from his notarial book, and the protest made out at the time; by which it appeared, [*105 that a demand was then made of the maker, and the protest made, and notice sent; and from its being his invariable practice to give notice, either personally, or by letter, to the indorsers, on the same day. Nor did he then recollect, that he addressed the letter to the defendant, in Washington, but he presumed from his book and protest, and his uniform practice, that if he did not know where the defendant lived (which was probably the case when he received the note), he inquired, and ascertained his residence, and addressed it properly. Upon which evidence, the defendant's counsel prayed the court to instruct the jury, that the above proof of notice was insufficient to charge the defendant as indorser of said note, and that the plaintiffs were not entitled to recover; which opinion the court gave. The plaintiffs' counsel excepted to the opinion. A verdict and judgment thereon was rendered for the defendant by the court below, and the cause was brought by writ of error to this court.

February 7th, 1821. *Key*, for the plaintiff, was stopped by the court.

Jones and *Law*, for the defendant, contended, that the notice was insufficient: 1. Because it was on the third day of grace: and 2. That there

was no sufficient proof of notice having been sent by mail, or of the contents of the letter sent; and that before secondary evidence would be *let in to prove the contents, notice should have been given to the defendant to produce it.

*106]

The Court were unanimously of opinion, that after demand of the maker on the third day of grace, notice to the indorser, on the same day, was sufficient, by the general law-merchant; and that evidence of the letter containing notice having been put into the post-office, directed to the defendant, at his place of residence, was sufficient proof of the notice, to be left to the jury; and that it was unnecessary to give notice to the defendant to produce the letter, before such evidence could be admitted.

Judgment reversed.

Mechanics' Bank of Alexandria *v.* Withers.

Opening default.

The circuit court for the district of Columbia has authority to adjourn to a distant day, and the adjourned session is considered as the same term.

The regular term began on the 3d Monday in April, and the court continued to sit, *de die in diem*, until the 16th of May, when it adjourned to the 4th Monday of June: *held*, that a defendant, against whom an office-judgment had been entered on the 16th of May, had a right, under the law and practice of Virginia, to appear at the adjourned session, and have the default set aside, on giving special bail, and pleading issuably.

Error to the Circuit Court for the District of Columbia.

*This cause was argued by *Lee* and *Swann*, for the plaintiff in error, and by *Taylor*, for the defendant in error.

*107]

February 9th, 1821. Marshall, Ch. J., delivered the opinion of the court.—This is a writ of error to a judgment rendered by the circuit court for the district of Columbia, sitting in Alexandria, in an action of debt; and the case depends on the laws of Virginia, as they stood when jurisdiction over the district was first exercised by congress.

By the law of Virginia, the proceedings, until an issue is made up in a cause, are taken in the clerk's office, at monthly rules, and judgments by default become final, on the last day of the succeeding term, until which day the defendant in any such action has a legal right to set the judgment aside, and to plead to issue. The circuit court held its regular session in April 1818, and continued to sit regularly until the 16th day of May, when it adjourned to the fourth Monday of the following June. The clerk, considering the day on which the court adjourned as the last day of the term, and the judgments at the rules as having, on that day, become final, issued an execution on one of these judgments, which had been obtained by the plaintiffs against Cave Withers and his common bail. When the court met in June, the defendant appeared, and, on motion, was allowed to set aside the office-judgment, give special bail, and plead to issue. The execution was, consequently, quashed. In the course of the term, judgment *was confessed by the defendant, for the sum claimed in the declaration, and a writ of error was then sued out, the object of which was to reverse the last judgment, and set aside all proceedings subsequent to the

*108]