

Case No. 906. BANK OF THE UNITED STATES v. ABBOTT.
[3 Cranch, C. C. 94.]¹

Circuit Court, District of Columbia.

May Term, 1827.

NEGOTIABLE INSTRUMENTS—EXTENSION OF TIME—DISCHARGE OF
INDORSER—EVIDENCE—DEMAND AND NOTICE.

1. After demand and notice to the indorser, the plaintiff may agree to give time to the maker of the note, without discharging the indorser.

[Cited in *Bank of U. S. v. Macdonald*, Case No. 925.]

2. The testimony of the notary, that he demanded of the maker payment of the note on the third day of grace, and gave notice to the indorser of the non-payment on the third and also on the fourth day, is competent evidence of demand and notice, although the witness does not recollect the day of the month on which such demand was made and such notice given.

[See *Coyle v. Gozzler*, Case No. 3,312; *M'Lemore v. Powell*, 12 Wheat. (25 U. S.) 557.]

At law. Assumpsit against the indorser of Rind's promissory note.

J. Dunlop, for the defendant, prayed the court to instruct the jury, that if they should find, from the evidence, that the bank, after the demand and notice to the defendant, agreed to give time to the maker, who had previously given a deed of trust to secure the bank, the defendant was discharged, from his liability; which instruction THE COURT (THRUSTON, Circuit Judge, contra) refused to give.

The witness, Brooke Mackall, the notary, testified that he made the demand on the third day of grace, and gave notice to the indorser on the third, and also on the next day thereafter; but on cross-examination said he could not recollect the days of the month and year, without reference to his notarial book, which was in the hands of the plaintiffs, and was not in court, or to certain copies from that book, which were in the hands of the plaintiff's counsel; but he testified positively that he had a distinct recollection, independently of his book, that it was on the third and fourth days of grace.

Mr. Dunlop moved the court to instruct the jury, that the testimony of Mr. Mackall was not competent evidence of demand and notice; which instruction THE COURT (THRUSTON, Circuit Judge, contra) refused to give.

Verdict for plaintiff, \$2,563.

¹ [Reported by Hon. William Cranch, Chief Judge.]