

Case No. 1,139.

BAYLEY v. DUVALL.

[1 Cranch, C. C. 283.]¹

Circuit Court, District of Columbia.

Dec. Term, 1805.

CONDITIONAL SALE—PARTIAL PAYMENT—FORFEITURE.

If money paid in advance is to be forfeited in case the residue be not paid by a certain day, the party who is to pay must tender or use his best endeavor to tender the balance due on or before the day limited.

[At law. Action for] money had and received, to recover one hundred and eighty dollars paid in advance for the purchase of the horse Yorick. The plaintiff paid the defendant one hundred and eighty dollars, in advance, for the horse, which was to be delivered to the plaintiff at a future day, on payment of the balance, and if the balance should not be paid on or before that future day, the advance-money should be forfeited. The defendant's prayer in effect was that the plaintiff must prove an actual tender of the balance, or that he attended at the defendant's house on the last day ready to pay, and that the defendant was not at home, &c

THE COURT was of opinion, that if it was understood by the parties that the money was to be paid and the horse delivered to the plaintiff at the defendant's house, it was incumbent on the plaintiff to prove a tender within the time, or that he attended at the defendant's house on the last day ready to pay, and that the defendant was not there. If no place was understood between the parties, the plaintiff should have used reasonable diligence and endeavors to find the defendant and tender him the money, on or before the last day.

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