

Case No. 1,729. BOWIE ET AL. V. BLACKLOCK.
[2 Cranch, C. C. 265.]¹

Circuit Court, District of Columbia.

Nov. Term, 1821.

NEGOTIABLE INSTRUMENTS—NON-PAYMENT—NOTICE TO INDORSER.

It is a sufficient excuse for not giving notice to the indorser of the non-payment of a promissory note by the maker, that the holder called at the usual place of business of the indorser, in business hours, and found it shut and no person there to receive notice.

[See *Burrows v. Hannegan*, Case No. 2,205.]

At law. Assumpsit [by Bowie and Kurtz] against R. S. Blacklock, surviving partner of the firm, of N. & R. S. Blacklock, who were indorsers of William F. Thornton's note due 25th August, 1818. On that day N. Blacklock, one of the partners, died at Port Tobacco, in Maryland, and the store-house in Alexandria, where they usually transacted their mercantile business, was shut when the notary came, within the usual business hours, and knocked hard at the door, but no person appeared to whom he could give notice of the non-payment by the maker of the note. The defendant's dwelling-house was in Alexandria, a short distance from the store-house; but no notice was given or left at the dwelling-house.

THE COURT (nem con.) at the last term had, upon the trial, instructed the jury, that the plaintiffs could not recover, for want of notice to the defendant. The verdict being for the defendant, THE COURT permitted the plaintiffs to move for a new trial, on the ground of misdirection of the jury upon the question of notice.

Mr. Taylor, for the plaintiff, cited *Crosse v. Smith*, 1 Maule & S. 545, and *Parker v. Gordon*, 7 East, 385.

Mr. Mason, contra, cited *Chit. Bills*, 136, 201, 202.

THE COURT (THRUSTON, Circuit Judge, absent) overruled the opinion before given, and instructed the jury that the holder of the note was only bound to call at the usual place of business of the defendant, in business hours; and if it be shut, and no person there to receive notice, the holder is excused for not giving notice.

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