

Case No. 5,440.

GILLIS v. VAN NESS.

{1 Cranch, C. C. 369.}<sup>3</sup>

Circuit Court, District of Columbia.

Dec. Term, 1806.

BILLS AND NOTES.

If the defendant receive the proceeds of the plaintiff's note, discounted with the defendant's indorsement, the plaintiff cannot recover the amount unless he has paid and produces the note, or accounts for its non-production.

Assumpsit for money lent and for money had and received, and insimul computasset  
The evidence relied upon by the plaintiff [the executor of Stanly Byus] was a receipt in these words, viz.: "Received of Mr. S. Byus one hundred dollars which I am to repay him, and which, together with two hundred dollars received of, and receipted to him before, makes the amount of a note indorsed by me and discounted in Bank of Columbia yesterday. John P. Van Ness. Jan. 27th, 1804."

THE COURT (nem. con.) said, the plaintiff cannot recover upon that receipt unless he shows that he has taken up the note, and produces it, or accounts for its non-production.

GILLUM, The WILLIAM. See Case No. 17,693.

<sup>3</sup> [Reported by Hon. William Cranch, Chief Judge.]