

Case No. 6,570.

HODGSON v. TURNER.

[1 Cranch, C. C. 74.]¹

Circuit Court, District of Columbia.

March Term, 1802.

FOREIGN BILL OF EXCHANGE—ACTION AGAINST
INDORSER—PROTEST—JUDGMENT AGAINST DRAWER—WHETHER A BAR.

1. In an action against the indorser of a foreign bill of exchange, for non-payment, it is not necessary to produce a protest for non-acceptance.
2. A judgment and execution by the plaintiff, against the drawer of a bill, is no bar to a

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judgment against the indorser, although that execution be levied on the drawer's goods, which are not sold for want of buyers.

The defendant was indorser of a foreign bill of exchange, protested for non-payment as well as for non-acceptance.

Mr. Gantt, for defendant, prayed the court to instruct the jury that it was necessary for the plaintiff to prove that the defendant had reasonable notice of the protest for non-acceptance; and cited *Kyd, Bills*, 109, 117-119, 137; *Milford v. Mayor*, 1 Doug. 55; Bull. N. P. 271; *Rogers v. Stephens*, 2 Term R. 713; *Goodall v. Dolley*, 1 Term R. 712; *Burrows*, 2,670; and the case of *Oates & Co. v. McCurdy*, in the general court of Maryland.

Mr. Mason, for plaintiff, cited *Brown v. Barry*, 3 Dall. [3 U. S.] 365, and *Clerk v. Russel*, Id. 420, 424.

THE COURT, on the authority of *Brown v. Barry* and *Clarke v. Russel* [supra], refused to give the instruction as prayed.

Mr. Gantt, for defendant, then produced a fieri facias, issued last term and returnable to this, on a judgment obtained by the plaintiff against Bowie, the drawer of this bill; on which execution he stated the marshal had seized the goods of Bowie, but that they were not sold for want of buyers; and prayed the court to instruct the jury that this execution so levied, was a discharge of the indorser. Seld. Prac. 564.

THE COURT refused to give the instruction.

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