

Case No. 7,104.

ISH v. MILLS.

{1 Cranch, C. C. 567.}¹

Circuit Court, District of Columbia.

July Term, 1809.

PROMISSORY NOTE—NOTICE OF NON-PAYMENT.

1. Notice to the indorser, of non-payment of a promissory note, not payable to order, is not necessary in Virginia.

[Cited in *Offutt v. Hall*, Case No. 10,450.]

2. Due diligence is a question for the jury.

Assumpsit against the indorser of Barnes & Holly's promissory note, not payable to order. The note became payable on the 21st of February, 1806. The plaintiff brought his suit against Barnes & Holly, on the 17th of May, 1806. Execution was issued in August, 1807. Barnes took the oath of an insolvent debtor in July, 1806, and Holly in December, 1807. This action was brought against Mills on the 2d of July, 1808.

E. J. Lee, for defendant, relied on the want of diligence in not giving notice to the defendant of the non-payment by Barnes & Holly.

THE COURT was of opinion that notice to the indorser of a promissory note, not negotiable, is not necessary in Virginia. The obligation of the indorser of such a promissory note in Virginia is that if the holder cannot, by using due diligence, obtain payment from the maker, the indorser will pay at all events, whether he had notice or not, and that due diligence is a question for the jury.

The defendant took a bill of exceptions, but did not prosecute a writ of error.

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