

Case No. 7,217.

JANUARY v. DUNCAN.

{3 McLean, 19.}¹

Circuit Court, D. Illinois.

June Term, 1842.

GUARANTOR OF A NOTE—ACTION AGAINST—DEMAND ON DRAWER AT MATURITY.

1. In an action against the assignor or guarantor of a note, the declaration must allege a demand on the drawer of the note when it became due.
2. In all cases where the undertaking is collateral, a demand and notice are essential.

At law.

Logan & Lincoln, for plaintiff.

Mr. Chickering, for defendant.

OPINION OF THE COURT. This action is brought upon a note given by W. B. Archer to Joseph Duncan, for four thousand dollars, payable five years from the 5th of January, 1837. This note the defendant assigned to the plaintiff, the 12th of July, 1839, and guaranteed the payment thereof. The declaration alleged no demand on the drawer at the maturity of the note, and on this ground the defendant's counsel demurred. There is nothing in the guaranty of this assignment which excuses a demand on the drawer of the note when due. The undertaking of Duncan was collateral, to pay the money when due, if Archer, the drawer of the note, should fail to pay it; and in all such cases a demand and notice are essential to the maintenance of the action against the assignor or guarantor. Where there is a special guaranty in the note, it is a special contract between the guarantor and guarantee, and it does not pass to the assignee of the note; in such case, the action must be brought between the parties to the guaranty. The demurrer is sustained; but leave is given to amend the declaration.

¹ [Reported by Hon. John McLean, Circuit Justice.]