

Case No. 7,849. KIRKPATRICK v. LANGPHIER.
[1 Cranch, C. C. 85.]³

Circuit Court, District of Columbia.

April Term, 1802.

DEBT SUR BOND—PRESUMPTION OF PAYMENT—EVIDENCE.

The obligee's indorsement of a payment upon a bond is not evidence to rebut the presumption of payment, unless made with the privity of the obligor.

Debt, on bond payable in 1775. The defendant relied on the length of time to prove payment. The suit was brought in April, 1801. The plaintiff [Kirkpatrick's executor] relies on an indorsement, dated December, 1781, in the handwriting of the testator, (who died in 1784) in these words, "Rec'd, 20 Dec., 1781, your account for work done, sixty shillings. T. K." The plaintiff also contended that five years during the war were to be deducted from the limiting time.

THE COURT directed the jury that they may presume payment, and ought to presume it, if they should not be satisfied that the indorsement was made with the privity of the defendant Verdict for defendant.

³ [Reported by Hon. William Cranch, Chief Judge.]