MCIVER v. KENNEDY.

Case No. 8,830.

[1 Cranch, C. C. 424.][1]

Circuit Court, District of Columbia. July Term, 1807.

PRINCIPAL AND SURETY—ENDORSER—INSOLVENCY OF MAKER—REASONABLE NOTICE—EVIDENCE—DEEDS—NOT RECORDED.

1. Under the laws of Virginia, in an action against the indorser of a promissory note, the plaintiff, to excuse himself for not having first brought suit against the maker, must show him to have been insolvent at the time of bringing the suit; and in order to recover, must have given reasonable notice of the non-payment by the maker; and the jury is to decide whether the notice was reasonable.

2. A deed of land in Maryland cannot be read in evidence unless recorded in Maryland.

Assumpsit upon W. Wilson's note, indorsed by the defendant [James Kennedy], to the plaintiff, as assignee of Gillis' estate. 1st count on the assignment of the note, setting forth that the maker, W. Wilson, was insolvent at the time of the suit brought. 2d count for money had and received.

THE COURT decided, (doubtfully,) that the plaintiff must prove the maker of the note insolvent at the time of bringing the action; that the plaintiff must prove reasonable notice to the indorser, of the non-payment by the maker; and that the jury were to decide whether the notice was reasonable.

THE COURT refused to permit the defendant to read in evidence (to prove the solvency of W. Wilson,) a deed of land in Washington county, Maryland, certified by T. Williams, (who calls himself clerk of Prince William county, in Virginia,) to have been proved in the latter county, but not recorded in Washington county in Maryland, according to the laws of Maryland.

[See Case No. 8,833.]

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

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