

Case No. 8,863. MCKINDER ET AL. V. DUNLAP.
[1 Cranch, C. C. 584.]¹

Circuit Court, District of Columbia.

Nov. Term, 1809.

CHECK—DEMAND OF PAYEE—INSOLVENCY OF DRAWER—PRESUMPTION.

If the drawer and payee of a check upon a bank reside in the town where the bank is, and the drawer be insolvent; the jury cannot, in law, infer from those facts, that the plaintiffs had used due diligence in demanding payment, and giving notice to the defendant.

The plaintiffs [McKinder & Guilliat] offered in evidence a check drawn by the defendant [Samuel Dunlap] upon the bank at Norfolk.

Mr. Jones, for defendant, contended that in order to charge the defendant, the plaintiffs must prove that they demanded payment from the bank; and gave notice to the defendant in reasonable time.

Mr. Taylor, for plaintiffs, offered to prove that the plaintiffs and defendant lived in Norfolk; that the bank was in Norfolk and solvent; and that the defendant was insolvent; and contended that the jury might infer from these facts that the plaintiffs had used due diligence in demanding payment from the bank and giving notice to the defendant.

But THE COURT was of opinion and so instructed the jury that they could not, in law, make that inference.

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