

TRAVERS v. APPLER.

{2 Cranch, C. C. 234.}¹

Circuit Court, District of Columbia. April Term, 1821.

EVIDENCE—TALLIES—NOTICE TO PRODUCE.

A baker, using tallies with his customers for the purpose of keeping an account of the number of loaves of bread delivered, may call upon the defendant to produce his counterpart, if a proper foundation be laid for such a call, by affidavit of the plaintiff that such tallies were kept with the defendant, and that he had a counterpart; and if the defendant will not produce it, and will not make oath that he had it not, the plaintiff may produce his counterpart in evidence to the jury.

Assumpsit for bread sold and delivered. The plaintiff had given notice to the defendant to produce the counterpart of his tallies.

THE COURT was of opinion that if the plaintiff would lay a foundation for his call upon the defendant, by affidavit that such tallies were kept by the defendant, and if the defendant would not produce them, nor make oath that he had not such tallies, the plaintiff might produce them in evidence.

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