

Case No. 4,569.
[2 Gall. 12.]¹

EVANS v. POTTER.

Circuit Court, D. Rhode Island.

Nov. Term, 1813.

FACTORS—GOOD FAITH—PLEDGE OF PRINCIPAL'S PROPERTY.

A factor is hound to good faith and reasonable diligence. He cannot pledge the property of his principal for his own debts; but he may for the payment of the duties accruing on the specific goods. See Story, Bailm. §§ 455, 456; Story, Ag. §§ 113, 198, and cases cited.

[Cited in *Marfield v. Goodhue*, 3 N. Y. 68.]

Assumpsit for breach of orders, against the defendant, who was master and also consignee of an adventure of the plaintiff put on board the ship Robinson Potter, on a voyage from Philadelphia to Archangel and back to the United States. The controversy, at the trial, turned principally on matters of fact, as to the correctness of the conduct of the defendant, under all the circumstances.

Mr. Searle and Trist. Burgess, for plaintiff.

Burrill and Dexter, for defendant.

Before STORY, Circuit Justice, and HOWELL, District Judge.

STORY, Circuit Justice (summing up to the jury). A factor is bound to ordinary diligence in relation to the property confided to him. Where his orders leave the management of the property to his discretion, he is bound only to good faith and reasonable conduct. He may lawfully do whatever the course and usage of the trade requires; and, indeed, unless his orders restrict him, he is bound to conform to this course of the trade. In no case can he wantonly sacrifice the property without being responsible to the shipper. If he can advantageously sell the property, and neglects so to do, he must answer in damages. But if the markets be low, or unusually crowded, if new and unexpected difficulties arise, he is not obliged to sell at all events and under every disadvantage. Neither the interests of commerce, nor the good faith due to his employer, would countenance such a proceeding. Neither can a factor lawfully pledge the property of his principal for his own private debts; but he may lawfully pledge it for the duties accruing thereon; or for any other purposes, which the usage of trade sanctions and approves.

Verdict for the defendant.

¹ [Reported by John Gallison, Esq].