

Case No. 4,730.

FENTON V. BRADEN ET AL.

[2 Cranch, C. C. 550.]<sup>1</sup>

Circuit Court, District of Columbia.

April Term, 1825.

CONTRACTS—IMPORTATION OF MERCHANDISE—UNREASONABLE INVOICE  
PRIOR—VALUE AT PLACE OF SHIPMENT.

1. If goods are shipped, by a merchant in England, to a mercantile house in this country, according to their order, they cannot refuse to receive them here; but, by receiving them, are not bound to pay the invoice price.

2. The plaintiffs can recover only as much as the goods were worth at the time and place of shipment, if the defendants object to the invoice price in a reasonable time.

Assumpsit for the price of flannels shipped by order of the defendants. The defendants [Braden, Morgan & Co.] thinking they were invoiced too high, had them appraised, and sold them.

Mr. Mason, for the plaintiff, contended that the defendants, having received and sold the goods, are bound to pay for them at the invoice price. If they did not like the price they should not have taken them.

Mr. Taylor, for the defendants. The receiving of the goods, without any explanation, would have been only prima facie evidence of agreement to the invoice price; but the act of receiving may, at the time, be explained by declarations and by acts. The defendants could not refuse to receive them, and did all they could to show that, by receiving them, they did not agree to the invoice price.

THE COURT (THRUSTON, Circuit Judge, absent) was of opinion that, as the goods were at the risk of the defendants, when put on board the ship at Liverpool, and the defendants had no agent there to accept, or refuse, or even to examine the goods and compare them with the invoice prices, and the defendants had given a general order for such goods, without any express agreement as to the price, the law will only raise an implied promise to pay as much as the goods were worth at the time and place of shipment. The defendants could not refuse to receive them, and oblige the plaintiff to take them back if they were such goods as the defendants ordered; and their receiving them here is no evidence of an agreement to pay the invoice price of them. But the receipt of the goods and of the invoice is prima facie evidence that the invoice price is the value, unless the defendants objected to that price in a reasonable time.

Verdict for the plaintiff, deducting 7 per cent from the invoice price.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]