

Case No. 4,770.

FIELD V. MOULSON.

[2 Wash. O. C. 155.]¹

Circuit Court, D. Pennsylvania.

April Term, 1808.

OMISSION OF CONSIGNEE TO OBJECT TO INVOICE—PRESUMPTION AS TO RECEIPT OF GOODS—ACCOUNT OF SALES—PRESUMPTION AS TO PRICES—EVIDENCE.

1. An invoice of goods received by the consignee, retained by him, and not objected to, and the truth of it not disproved, is evidence that all the goods enumerated in it were received by the consignee.
2. If a consignee has rendered no account of sales of merchandise for many years, and at the trial offers no evidence to prove what part was sold, and at what prices, there is every presumption that the goods were sold at the invoice prices.
3. The plaintiffs offered to read an entry in the books of the bankrupt, to prove an item in the account against the defendant; but the court would not permit it

Action [by Field's assignees] for goods sold and delivered. The plaintiffs proved that Field had, as long ago as 1794, consigned a quantity of goods to the defendant to sell on commission, by a letter, which the defendant, being called upon by the plaintiffs, produced in court on the trial, with an invoice enclosed; making the amount two hundred and fifty-four pounds one shilling and ten pence. In the letter, the bankrupt stated the goods to be unsaleable, and that he expected they would hardly sell for two-thirds, or one-half of the invoice price. The defendant could not show that he had rendered the bankrupt any account, or given him any information respecting the goods so consigned, nor did he produce any evidence upon the subject. The defence was, that the plaintiffs ought to prove that all the goods mentioned in the invoice were actually sent, and that they were sold; otherwise, the plaintiffs could only recover as much as the defendant was willing to admit

Mr. Serjeant, for plaintiffs.

Mr. Shoemaker, for defendant.

WASHINGTON, Circuit Justice (charging jury). An invoice of goods, received by a consignee, retained, and not objected to, and the truth of it in no manner disproved, is evidence that all the articles enumerated in it, were received by the consignee; and if the consignee has rendered no accounts of sale, particularly after so many years, and at the trial offers no evidence to prove what part was sold, and at what prices; every presumption is against him, that he sold them at the invoice prices. But in this case, as the bankrupt stated in the letter which covered the invoice, that they would not probably sell for so much, the jury will say what damages the plaintiffs are entitled to receive.

Verdict for 447 dollars and 13 cents.

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¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the "United States, under the supervision of Richard Peters, Jr., Esq.]