

Case No. 5,785.

GREENOUGH V. LANGTREE.

[1 Hayw. & H. 72.]<sup>1</sup>

Circuit Court, District of Columbia.

April 15, 1842.

JUSTICE OF THE PEACE—JURISDICTION—REDUCTION OF CLAIM.

A plaintiff cannot withdraw a part of his account so as to bring the balance within the jurisdiction of a justice of the peace and recover in an action for the part withdrawn unless with the consent of the defendant.

At law. Action on an account [by Frederick W. Greenough against Samuel D. Langtree].

Jos. H. Bradley, for plaintiff.

Clement Cox, for defendant.

Before

CRANCH, Chief Judge, and THRUSTON and J MORSELL, Circuit Judges.

This is a suit brought on an account for goods sold to the defendant, as appeared by the following exhibit: "Samuel D. Langtree, to Frederick W. Greenough. To 13 numbers of the Indian Biography, \$6 per number. Delivered by Daniel Rice. \$78. Washington, D. C. Jan. 20, 1841." The following agreement was copied from the book of subscriptions and admitted as evidence: "Terms. This work will be comprised in twenty numbers at six dollars per number, each number will contain six portraits. Subscribers: S. D. Langtree, Georgetown, D. C." &c. Plea, non assumpsit.

The following prayers were asked to be given by the counsel for the defendant, and given as prayed: The plaintiff is not entitled to recover, unless the jury shall be satisfied from the evidence that the goods in question were sold and delivered by plaintiff to defendant by request of the latter, If the jury should believe from the evidence that the defendant agreed to accept the goods in question if delivered by the plaintiff, the plaintiff is not entitled to recover, unless the jury shall be satisfied from the evidence that the plaintiff delivered or offered to deliver the same in a reasonable time to the defendant. If the jury shall believe from the evidence that the plaintiff delivered the goods in question and afterwards voluntarily withdrew a portion of them to reduce his demand within the jurisdiction of a justice of the peace, and sued the defendant for the residue before the justice of the peace, then the plaintiff is not entitled to recover for the portion so withdrawn, although the jury shall believe from the evidence that the object of the plaintiff in so withdrawing them was to reduce his claim within the jurisdiction of a justice of the peace, unless at the trial before the said justice the defendant refused to agree to such withdrawal of the said five books for the purpose aforesaid, and the said justice thereupon nonsuited said plaintiff, and the plaintiff offered to return them to the defendant.

Judgment for plaintiff on the verdict of the jury for the amount claimed.

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<sup>1</sup> [Reported by John A. Hayward, Esq., and Geo. C. Hazleton, Esq.]