

Case No. 6,571. HODGSON v. WOODHOUSE.  
[1 Cranch, C. C. 549.]<sup>1</sup>

Circuit Court, District of Columbia.

July Term, 1809.

TROVER AGAINST MASTER OF VESSEL—WHEN IT LIES.

Trover will not lie against the master of a vessel for the cargo, unless the freight is paid, or tendered, or the payment waived; nor if the goods were lost so that they did not come to the use of the defendant.

Trover against the master of a vessel for cheese and porter.

Mr. Taylor, for defendant, prayed the court to instruct the jury, that the plaintiff could not recover, unless he had paid or tendered the freight;—which instruction THE COURT gave with a proviso that the jury should not be satisfied by the evidence that the defendant had waived the precedent condition of payment. *Ross v. Johnson*, 5 Burrows, 2825.

THE COURT, also, at the prayer of the defendant, instructed the jury, that if they should be of opinion that the cheese was eaten by the rats, or otherwise lost, so that it did not come to the use of the defendant, the plaintiff cannot recover in this form.

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