

Case No. 7,129.

JACKSON v. BAKER.

{1 Wash. C. C. 394.}<sup>1</sup>

Circuit Court, D. Pennsylvania.

April Term, 1806.

SIMPLE CONTRACT DEBT—EXTINGUISHMENT BY TAKING A BOND.

Where a commission merchant takes a bond for a simple contract debt due to him for goods sold on commission, and includes in the same instrument a debt due to himself, he makes himself answerable to his principal for the amount of the goods; as he has deprived him of the means of pursuing his claim against his debtor, by extinguishing the debt due by simple contract.

{Cited in *Townes v. Birchett*, 12 Leigh (Va.) 189; *Rogers v. Bradford*, 1 Pinney, 432; *Goldsmith v. Manheim*, 109 Mass. 190.}

The plaintiff consigned a number of boxes of hats, to the defendant, to sell. The only question in dispute was, as to one box, which the defendant sold on credit for 211 dollars; the amount of which, the defendant included in a bond, taken to himself, from the purchaser, for a much larger sum, part of which was due to the defendant personally.

Hallowell, for defendant, insisted, that the plaintiff ought not to recover the above sum of 211 dollars, as the defendant had not yet received it, from the person who purchased that box of hats; and that his taking a bond for the amount, made no difference. *Price v. Ralson*, 2 Dall. [2 U. S.] 60.

THE COURT stopped Meredith, who was for the plaintiff; and informed the jury, that the defendant ought either to have paid this money to the plaintiff, or enabled him to look to the purchaser. But that he had not done the former, and had disabled himself from doing the latter. That the plaintiff could not have sued the purchaser, because the simple contract debt was extinguished by the bond; and the defendant, having mixed the debt due to himself, and to the plaintiff, in one bond, taken in his own name, that the plaintiff had no remedy in the bond; and it does not appear, that any offer was made to assign the bond. If the plaintiff cannot recover from the defendant now, when can he recover? Sue him when he pleases, the defendant may keep him at arm's length, by saying, "I have not yet collected the money." Whereas, the debt having been originally due to the plaintiff, he might have sued for it at any time, in his own name, if he had not been prevented by the conduct of the defendant; who, if he is the cause why the plaintiff cannot sue the real debtor, makes himself the debtor. The jury found accordingly for the plaintiff.

{See Case No. 7,130, where a rule for a new trial was discharged.}

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