

Case No. 7,130.

JACKSON v. BAKER.

[1 Wash. C. C. 445.]<sup>1</sup>

Circuit Court, D. Pennsylvania.

April Term, 1806.

SALES ON COMMISSION—SIMPLE CONTRACT DEBT—ACCEPTANCE OF  
BOND—ACTION BY PRINCIPAL FOR PROCEEDS OF SALE OF  
GOODS—PREVIOUS DEMAND OF BOND.

1. Where an agent, who has sold the goods of his principal, has taken a bond for the amount of the sale, in place of the simple contract debt originally contracted for the goods, and has included

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in the bond a debt due to him on his own account, by the debtor for the goods; a demand of the bond, before action brought against him by the principal, for the proceeds of the sale of the goods, is not necessary.

2. Aliter, if the bond had not been taken for any sum but that due for the goods of the principal.

Rule for new trial: 1st. Because the defendant was not answerable, until he should have received the money. [Bond v. Haas] 2 Dall. [2 U. S.] 134. 2d. That indebitatus assumpsit for money had and received, will not lie in this case.

BY THE COURT. On the first point, I repeated what was stated in the charge to the jury.<sup>2</sup> Secondly. That the conduct of the defendant, by extinguishing the original debt, and destroying all privity between the plaintiff, and the person to whom the goods were sold, is to be considered as a receiver of that debt, to the use of the plaintiff, as much so, as if he had released the debt. Rule discharged.

[See Case No. 7,129.]

<sup>1</sup> [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.]

<sup>2</sup> The principal ground used on this argument for a new trial, was, that the plaintiff ought to have demanded the bond, before he brought the suit. The court, in answer to this, observed, that if a bond had been taken for this debt alone, this argument might have weight in it. But, as it was mixed with the defendant's money, such demand was unnecessary; because, the plaintiff could not have compelled the defendant to deliver the evidence of a debt due to the defendant, though in part it contained money due to the plaintiff.