

## SOMERS v. TAYLOE.

{2 Cranch, C. C. 138.}<sup>1</sup>

Circuit Court, District of Columbia. April Term, 1817.

## EVIDENCE—WRITTEN

## CONTRACT—PAROL—DEMAND—WAIVER.

1. If a written contract between A. and B., for the delivery of corn, contain allusions to C. and D. tending to show their interest in the contract, parol evidence may be given to show that A. was the agent of C., and that B. was the agent of D., and that the contract was made by A. and B. for and in behalf of their respective principals; and the contract may be admitted in evidence in an action by C. against D. for the nondelivery of the corn which was the subject of the contract.
2. If the defendant positively refused to deliver the corn according to the contract, such refusal dispensed with the necessity of a demand on the part of the plaintiff, and of proof of averment that he was ready at the landing to receive the corn.

This was a special action of assumpsit, for not delivering corn according to a written contract between Greenlow and Raymond. The declaration avers that Greenlow was the agent of Daniel Somers, and Raymond the agent or John Tayloe.

Mr. Swann, for defendant, objected to the contract being read in evidence on this declaration, because the agreement does not show the agency of the parties, and no parol evidence can be given to explain the written contract.

Mr. Taylor and Mr. Lee, for plaintiff, observed that the contract was not under seal, and was offered in connection with the letters of Mr. Tayloe acknowledging the contract as his, and as made with Mr. Somers.

THE COURT (nem. con.) was of opinion that as, in the contract, the com is said to be the corn upon Colonel Tayloe's plantation called "Oaken Brow," and

as there are several other references in the contract to Colonel Tayloe and Mr. Somers, the plaintiff might give parol evidence of the agency of the parties.

Mr. Swann, for defendant, moved the court to instruct the jury that the plaintiff must prove a demand of the corn.

Mr. Taylor, contra. The defendant, by his letters of the 12th and 24th of June, declares that he will not deliver it. This absolved the plaintiff from his obligation to demand it.

THE COURT (nem. con.) decided that the demand was waived by the defendant's declaration that he would not deliver the corn.

One count of the declaration averred that the plaintiff was ready at the landing to receive the corn; and Mr. Swann prayed the court to instruct the jury that, upon that count, it was necessary that the plaintiff should prove that fact.

But THE COURT decided that the plaintiff need not prove that averment, if he proves that the defendant waived the demand, by 791 declaring that he would not deliver the corn if demanded.

Verdict for the plaintiff, \$375.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]  
claring that he would not deliver the corn if demanded.

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