YOUNG ET AL. V. BLACK.

Case No. 18,153.
{1 Cranch, C. C. 432.}[1]

Circuit Court, District of Columbia. July Term, 1807.

NON JOINDER OF PLAINTIFF.

Upon a joint shipment and orders by three persons, the master is not liable to an action by two of them only, for breach of those orders, unless he has expressly promised to pay them their proportion of the damages.

Assumpsit for disobedience of orders. The first count of the declaration stated a cargo shipped jointly by plaintiffs and one Lawrason and joint orders from all three, and an express promise in writing by the defendant to obey those orders; and a breach of the orders; and averred that If the defendant had obeyed the orders and brought in a cargo of salt, the profit of the plaintiffs on the sale of that salt would have been fourteen hundred and thirty-five dollars; by reason whereof the defendant became liable to pay that sum to the plaintiffs, and being so liable, the defendant, in consideration thereof, promised the plaintiffs to pay that sum to them on demand. The second count was like the first, but upon another breach of the orders. The third, was indebitatus assumpsit for goods sold and delivered. The fourth, money had and received. The fifth, insimul computasset.

THE COURT, upon the prayer of Mr. Swann, for the defendant, decided (nem. con.) that the plaintiffs, Young and Deblois, could not recover without evidence of an express promise to pay them their proportion of the damages for the breaches alleged. And that the orders, &c, were not evidence of such express promise, nor were they evidence on either of the three last counts. The plaintiffs became nonsuit.

[1] {Reported by Hon. William Cranch, Chief Judge.}