

Baits Vs. Peters and Stebbins

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SooperKanoon Citation : sooperkanoon.com/79002

Court : US Supreme Court

Decided On : 1824

Appeal No. : 22 U.S. 556

Appellant : Baits

Respondent : Peters and Stebbins

Judgement :

Baits v. Peters & Stebbins - 22 U.S. 556 (1824)

U.S. Supreme Court Baits v. Peters & Stebbins, 22 U.S. 556 (1824)

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ERROR TO THE DISTRICT

COURT OF ALABAMA

SYLLABUS

A covenant under seal to come to a settlement within a limited time and to pay the balance which might be found due is merely collateral, and cannot be pleaded as an extinguishment of a simple contract debt, the period within which the settlement

was to be made having elapsed before the commencement of the suit, and the plea not averring that any such settlement had been made.

This was an action of assumpsit commenced in the court below in February, 1821, by Baits, the plaintiff in error, against Peters & Stebbins, the defendants in error, in which the plaintiff declared against the defendants, upon an agreement to account with him for goods delivered by him to the defendants for sale on commission and also for money had and received, and upon an *insimul computassent*. The defendants pleaded the following pleas: 1st, the general issue; 2d, payment; 3d, an agreement under seal made at New York on 15 July, 1820, and long after the said promises and undertaking, between the plaintiff and one of the defendants, by which the plaintiff covenanted not to sue the defendants within six months and to send on an agent within the same term of time to settle the accounts with the defendants at Blakely, in Alabama, and the defendants covenanted to come to a settlement

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with the said agent and to pay the balance which should be found to be due. To this last plea there was a demurrer, and, judgment being rendered thereon by the court below for the defendants, the cause was brought by writ of error to this Court.

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court that the third plea was bad.

The agreement stated in that plea, although under seal, did not operate as an extinguishment of the simple contract debt. The agreement was but a collateral undertaking to come to a settlement within a limited period, which had elapsed before the commencement of the suit, and to pay the balance found due upon such settlement. There was no averment in the plea that any such settlement had been had under that agreement, and consequently the covenant to pay the balance did not appear to have attached upon the demand.

