

SUN MUT. INS. CO. AND OTHERS V.  
MISSISSIPPI VALLEY TRANSP. CO.,<sup>\*</sup>

*District Court, E. D. Missouri.* June 15, 1883.

1. PRACTICE—EXCEPTIONS TO COMMISSIONER'S REPORT.

Supposed errors in a decree of the court cannot be reviewed on exceptions to the report of a commissioner appointed to ascertain damages.

2. DAMAGES—COMMISSION ON SALES OF ABANDONED PROPERTY NOT ALLOWABLE.

Where property damaged through the negligence of a common carrier was abandoned by the owner to the underwriters, who paid the loss, sold the property, and brought suit against the carrier for damages, *held*, that said underwriters were not entitled to any commission on said sales.

In Admiralty. Exceptions to commissioner's report.

The special commissioner appointed by the court to ascertain and report the damages which libelants had suffered by reason of the collision mentioned in the libel in this case,<sup>\*</sup> filed a report allowing the libelants, among other things, a commission of 2½ per cent, on sales which they had made of goods damaged by the collision, and abandoned to them by the owners. The respondent filed a number of exceptions, one of which is to the allowance of said commission.

*O. B. Sansum* and *Brown & Young*, for libelants.

*Given Campbell*, for respondent.

TREAT, J. The rules by which damages are to be estimated were established in the case of *The Scotland*, 105 U. S. 24.

Many of the exceptions filed look to supposed errors in the former decree of the court, which cannot be reviewed in these exceptions. Without passing formally on each of the exceptions named, *seriatim*, the court rules that all commissions charged should be rejected; for, if there was an abandonment, technical

or otherwise, the title to the property passed to the underwriters. They should not be allowed commissions for selling their own property. True, such commissions were taken into consideration for the ascertainment of the value of the salvaged property; yet it is not properly chargeable as commissions against the respondent. Therefore the account, properly stated, will be, deducting commissions and interest thereon, as follows: Sun Mutual Insurance Company, \$2,097.90; Hibernia Insurance Company, \$2,660.31; Citizens Insurance Company, \$4,762.46. All the exceptions are overruled, except these as to commissions, and the decree will be in favor of the respective libelants, as above stated.

\* Reported by B. F. Rex, Esq., of the St. Louis bar.

\* See 14 FED. REP. 699.

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