

right to proceed as they did, no matter from what motive, if they had a claim reasonably affording a probable cause of action; provided, however, that if they failed to establish that claim they must compensate the debtor for all injury he sustains from the attachment. They cannot escape that statutory liability by honest belief or probable cause, and must bear the consequences; moreover, they consulted competent counsel, and so far as I can see withheld no material fact then known to them to be material or important, nor did they misrepresent any fact to him. He advised the attachment, and that in such a case protects them from punitive damages. It is of no consequence counsel made a mistake. It is only when the courts have decided that counsel did make a mistake that the client needs the benefit of this doctrine. If counsel advise correctly there is no occasion to rely on the principle. Hence we do not try the correctness of the advice of counsel. If he lays all the facts before the counsel the protection is complete. But this cannot protect them from liability for damages that will compensate the plaintiff for the wrongful attachment, and that it was wrongful there can no longer be any doubt. The judgment of the justice of the peace is conclusive of that. You will therefore, gentleman of the jury, not proceed upon any idea of punishing the defendants, but will proceed to award such compensatory damages as in your judgment, on the proof, the plaintiff is entitled to receive under the instructions already given you.

The rulings in this case were based on *Jerman v. Stewart*, 12 FED. REP. 266, which case was approved by the supreme court of Tennessee in *Renkert v. Elliott*, (not yet reported,) April term, Jackson, 1883. H.

BROOKS v. COQUARD.¹

(Circuit Court, E. D. Missouri. November 2, 1883.)

CONTRACTS—SALES—DAMAGES.

Where A., in St. Louis, telegraphed to B., in New York, an offer to sell stock at a certain price, "St. Louis delivery," and B. answered by telegraph, "Accept your offer; draw on me with certificate attached payable at office of C., New York," and afterwards telegraphed to know whether the stock could be delivered, and was answered, "Will ship to-night if you pay expenses; sale was St. Louis delivery;" and replied, "All right; add expenses of forwarding to draft," and A. then refused to deliver, and at the time of the refusal the market value of the stocks was higher than when the sale was closed: *Held*, (1) that the contract of sale was closed by the sending of B.'s first telegram; (2) that the contract was for a delivery at St. Louis; (3) that B. was entitled to the difference between the market value of the stock at St. Louis at the time of the sale and its value at the time of A.'s refusal to deliver, with legal interest.

At Law.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

Suit for breach of contract to sell 392 shares of the common stock of the Louisiana & Missouri River Railway Company, at \$26 per share. The contract of sale was made by telegraph. The case was tried by the court without a jury. At the trial copies of the following telegrams were introduced in evidence:

"ST. LOUIS, February 14th.

"*James I. Brooks, Boston*: Will sell 392 shares L. & M. common at 26, St. Louis delivery. Order good until 10 o'clock to-morrow A. M.

"L. A. COQUARD.

"BOSTON, February 15th.

"*L. A. Coquard, St. Louis*: Accept your offer. Draw on me, with certificate attached, payable at office of Charles Head & Co., 11 Wall street, New York.

JAMES I. BROOKS.

"Sent 9 A.M.

"BOSTON, February 15th.

"*L. A. Coquard, St. Louis*: Accepted your offer early this morning. It is all right. Offer any more stock you may have.

JAMES I. BROOKS.

"BOSTON, February 15th.

"*L. A. Coquard, St. Louis*: When can you deliver stock bought this morning? Answer.

JAMES I. BROOKS.

"ST. LOUIS, February 15th.

"*James I. Brooks, Boston*: Will ship to-night if you pay expense. Sale was St. Louis delivery.

L. A. COQUARD.

"BOSTON, February 15th.

"*L. A. Coquard, St. Louis*: All right. Add expense of forwarding to draft. Have you any more?

JAMES I. BROOKS.

"ST. LOUIS, February 15th.

"*James I. Brooks, Boston*: As you have not complied with my terms, I here declare sale and all orders to sell La. & Mo. Com. off.

"L. A. COQUARD."

The telegrams were sent in the order in which they appear above. Evidence was introduced tending to prove that at the time the last telegram was sent Louisiana & Missouri common was selling for 1 per cent. of its par value more than at 9 o'clock in the morning, when Coquard's offer was accepted. It was contended on behalf of the plaintiff that the contract was for a delivery at New York, and that he was entitled to the difference between the price at which he bought and the market value of the stock in New York on the day on which it would have reached there if shipped the day of the sale.

Taylor & Pollard, for plaintiff.

Fisher & Rowell, for defendant.

TREAT, J. The contract must be considered closed on February 15th, hence the plaintiff is entitled to damages at St. Louis rates on that day, the defendant having then given notice of refusal to fulfill the contract.

Judgment is therefore given at the rate of 1 per cent. advance on 392 shares, viz., for \$392, with interest at the rate of 6 per cent. from the day on which the contract was broken.

SCRUGGS and others v. BALTIMORE & O. R. Co.

(Circuit Court, E. D. Missouri. November 1, 1883.)

1. COMMON CARRIERS—NEGLIGENCE—EXCEPTED PERILS.

When goods, which a common carrier has undertaken to transport, are lost *in transitu* by fire, through its negligence, it is liable, even where its bill of lading provides that it shall be exempt from liability in case of loss by fire.

2. SAME—BILL OF LADING—LIMITATION OF LIABILITY.

Where it was orally agreed between A., a shipper, and B., a common carrier, that the latter should transport all goods which the former desired to ship from X. to Z., for a certain sum per hundred pounds, regardless of value, and A. shipped certain packages by B. under said agreement, but took a bill of lading therefor, which provided that unless the shipper had the value of his packages inserted in the bill of lading given for them the carrier would not be liable for an amount exceeding \$50 on each package, but the values of the packages were not asked for by B. or inserted in the bill of lading, and the goods were lost *in transitu* through B.'s negligence, *held*, that B. was liable for their full value.

At Law.

This is a suit brought to cover the full value of certain goods which were lost by fire through the defendant's negligence while being transported by it from New York to St. Louis. The plaintiffs shipped said goods under an oral agreement with the defendant by which the latter undertook to transport all such goods, regardless of their value, for a certain sum per hundred pounds. The bill of lading received by plaintiff's consignors from defendant's agents provided, however, that unless the shippers had the values of their packages inserted in the bill of lading given for them the defendant would not be liable or responsible for an amount exceeding \$50 on each package. It also provided that defendant should not be liable in case of loss by fire.

The values of the packages shipped were not asked for by defendant, however, and were not inserted in the bill of lading.

Thomas Metcalf, for plaintiffs.

Garland Pollard, for defendant.

TREAT, J. The evidence disclosed that the loss was caused by the negligence of the defendant; therefore the exemption as to the fire in the written bill of lading, if applicable, would not change the result. The only question concerning which there was difficulty related to the required valuation of the property shipped. It is a correct rule that where special values connected with shipments should be disclosed, and the contract between the parties called therefor, with limitation agreed, such agreements should be upheld. The case before the court shows that shipments of goods in the ordinary course of plaintiffs' business were to be made under a verbal agreement with respect to the rates therefor. Of course, it must be held to be within

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.