

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.

the contemplation of the parties that shipments should be in the ordinary course of such transactions. No limitations as to the values were made by the oral agreement; nor does it appear that there was any extraordinary value outside of plaintiffs' usual course of shipments, hence, the loss having occurred through the negligence of the defendant, the plaintiffs are entitled to recover the full value of the goods forwarded, with interest.

Judgment, therefore, is rendered for \$4,077.

In re SECOR and others, Bankrupts.

(District Court, S. D. New York. October 31, 1883.)

1. BANKRUPTCY—RENT—MACHINERY.

The privilege of an assignee in bankruptcy to permit the bankrupt's property, consisting of tools and machinery, to remain in the premises to be sold as they stand with a further lease, is a valuable privilege, for which a fair compensation for the use of the premises should be awarded to the landlord.

2. SAME—AGREEMENT WITH LANDLORD.

Where the landlord was also desirous of procuring a new tenant in connection with the sale of the tools and machinery, and he forebore to eject the assignee under dispossession proceedings on an agreement for a fair compensation, *held*, that the arrangement being for the mutual interest and benefit of both parties, one-half of the rental value of the premises should be paid by the assignee while in possession under that arrangement.

In Bankruptcy.

B. F. Watson, for assignee.

Benedict, Taft & Benedict, for petitioners.

BROWN, J. Exceptions have been taken to the report of the register fixing \$600 per annum as a reasonable compensation to the petitioners, H. D. and J. U. Bookman, for the use of their premises by the assignee in bankruptcy from October 8, 1875,—the date of filing the petition in bankruptcy,—until July, 1878, when the premises were surrendered by the assignee. The premises consist of 12 lots of land, with some old buildings upon them, containing machinery and tools, which, if they could have been sold as they stood without removal from the buildings, and in connection with a lease of the premises, were estimated likely to bring about \$40,000; but which, if removed, could not be expected to bring more than one-fifth part of that sum. The assignee, as the register finds, took possession of the premises and of the property. The leases were at a rent of about \$4,000 per year,—considerably greater than the rental value of the premises at the time of the bankruptcy,—and no express arrangement was at first made in regard to the payment of rent by the assignee. In April, 1876, the petitioners obtained a warrant in dispossession proceedings for the removal of the assignee. This led to a further