

bond, but, on his coming to Memphis, he did not notify the consignors, nor rely on them to save their shipments. The case is one for general average; and the fact that the Mitchell did not complete her trip, but returned, when raised, to the nearest port of safety for repairs, should not defeat the contribution under the facts of this case. The custom to include certain expenses in the general average is, perhaps, not admissible as evidence; but in this case there was, in effect, one continuous effort to save the sunken vessel and her cargo, and the average should include all the expenses from the sinking of the vessel, not excluding those incurred for a reshipment of a part of the damaged cargo from Memphis to New Orleans on the Cherokee. Decree accordingly.

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LINDLEY v. HUNT.<sup>1</sup>

(Circuit Court, E. D. Missouri. November 1, 1884.)

**SALES—IMPLIED WARRANTY.**

In sales of personal property, in the absence of express warranty, where the buyer has an opportunity to inspect the commodity, and the seller is guilty of no fraud, and is not the manufacturer of the article he sells, the maxim of *caveat emptor* applies.

At Law.

*McKeighan & Jones*, for plaintiff.

*Blodgett & Dickson*, for defendant.

TREAT, J. Suit on a promissory note. The defense is a failure of consideration *pro tanto*. That defense arises in this way: The note was given for the purchase of a second-hand locomotive, and it is contended there was a warranty of said locomotive, or a representation as to its efficiency, on which the defendant relied. It so happened that after the locomotive was delivered and intermediate repairs, that said locomotive did not, without further repairs at the cost of defendant, operate successfully. The railroad retained said locomotive. The defendant in this case is the joint maker of the note, and as such liable therefor, unless the defense interposed is established.

The evidence discloses that a full test was made by the railroad and defendant with respect to said locomotive, and that the same was purchased on the judgment of the defendant with respect thereto, and not upon any representations made by the plaintiff; also that there was no warranty. Hence the defense fails. Judgment for the plaintiff for \$5,512.50.

See *Reynold v. Palmer*, 21 FED. REP. 433, and note, 439.—[ED.]

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.

## BOYCE and another v. BANK OF COMMERCE.

*(Circuit Court, E. D. Missouri. November 1, 1884.)*

## CONSIGNOR AND CONSIGNEE—PLEDGE

Where a consignor draws a sight draft upon his consignee before the latter has sold the goods consigned, a pledge by the consignee of the consignment, to secure a loan with which to meet the draft is valid.

## At Law.

*Wm. S. Bodley and J. R. McMahan*, for plaintiffs.

*Phillips & Stewart*, for defendant.

TREAT, J. This is a suit as for conversion by defendant of plaintiffs' property. The facts are, substantially, that there had been business relations between James Boyce, one of the plaintiffs, and Catchings & Co. Thereafter the firm of James Boyce & Co. was established. In the course of their dealings shipments were made by the copartnership (plaintiffs) to said Catchings & Co., and sight drafts drawn upon them. Catchings & Co., not having in their hands funds belonging to the plaintiffs to meet said drafts, arranged with the defendant to secure funds sufficient therefor, pledging as collateral consigned goods in their hands.

The controlling question is as to said pledge, collateral to the obligations on which the defendant advanced the amount of the drafts. The doctrine that a factor cannot pledge for his private debts goods consigned to him, is well established. But when, in the course of dealings between consignor and consignee, drafts are drawn, as in this case, at sight, no funds being in the hands of the consignee to meet the same, and he causes, in the ordinary course of commercial business, said drafts to be protected by pledge of the consigned goods, is such pledge invalid? Ordinarily, the bank discounting is not supposed to know the state of accounts between drawer and drawee, therefore may require collaterals. If those collaterals consist of property directly involved in one accounting between consignor and consignee, the discounting bank ought not to be held by the final determination of the accounts; yet, if it knew that there were ample funds in the hands of the consignee and drawee to meet the sight drafts, it may be that said bank would not be entitled to receive and hold the collaterals as against the consignor.

But the evidence discloses an entirely different condition of accounts between consignor and consignee, and the bank itself knew nothing thereof. The case, simply stated, is this: The plaintiffs drew sight drafts against their consignee, the consigned property not having been sold in the intermediate time. To protect said drafts the consignees negotiated therefor with the defendant bank. That was a valid pledge. The tender by plaintiffs to the bank of costs and

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.

charges, with the demand for the collaterals, was not sufficient, for the collateral was held lawfully for the amount of advances made to the plaintiffs. The refusal to surrender the goods shipped, without a tender for the full amount taxed, was rightful. Hence there was no conversion entitling the plaintiff to recover.

Judgment, therefore, is for the defendant.

### C. N. NELSON LUMBER CO. v. TOWN OF LORAINÉ.

(Circuit Court, W. D. Wisconsin. 1884.)

#### 1. TAXATION—INTERSTATE COMMERCE—LOGS IN TRANSIT.

Logs cut on lands owned by a Minnesota corporation in Wisconsin and hauled down to a river, and piled on the ice to await the opening of the river, to be floated down into Minnesota, to be there manufactured into lumber, cannot be considered as in transit from one state to another in a commercial sense, and may be assessed and taxed in Wisconsin.

#### 2. SAME—CONSTITUTIONALITY OF WISCONSIN STATUTE OF 1882.

Sections 1 and 2 of the Wisconsin statute of 1882, regulating the assessment and taxation of logs belonging to non-residents, is not unconstitutional as violating the principle of uniformity in providing for an assessment in April, while logs belonging to residents are assessed in May, nor as unjustly discriminating against non-residents.

#### 3. SAME—DOUBLE TAXATION.

The fact that lands on which logs are grown are assessed for taxation in May, and the logs cut therefrom are assessed for taxation in the following April, does not render the tax on the logs a second tax.

#### 4. SAME—TAXATION IN ANOTHER STATE—REMOVAL OF PROPERTY.

Where a tax is lawfully levied on property in one state, the constitutionality of such tax is not affected by the fact that such property is again subjected to taxation in another state to which the owner has removed.

At Law.

*J. N. & I. W. Castle, Fayette Marsh, and Clapp & McCartney*, for plaintiff.

*George D. McDill*, for defendant, with *J. N. Searles*, of counsel.

BUNN, J. This is a general demurrer to the first and third counts of the plaintiff's complaint, in an action at law to recover back taxes paid to the treasurer of the defendant town. The facts in the case are briefly these: The plaintiff is a corporation created under the laws of Minnesota, and doing business at Stillwater, in that state. It is, and for many years has been, the owner of large tracts of pine-timbered lands in northern Wisconsin, and is engaged in the lumbering business, which consists in cutting pine logs from the timber of said lands during the winter season in each year, and hauling the same upon sleds to the different streams tributary to the Saint Croix river, in Wisconsin, and placing them upon the banks of said streams and upon the ice thereof, between the banks, and there awaiting high water in the spring to transport them down said streams into the