

August. Then the misunderstanding of the defendants was known to the plaintiffs, and it was the duty of the plaintiffs at once to telegraph the defendants and call their attention to their misconstruction of the plaintiffs' request. The law upon this subject is well expressed by section 2756 of the Code of Georgia:

"The intention of the parties may differ among themselves. In such case the meaning placed on the contract by one party, and known to be thus understood by the other party at the time, shall be held as the true meaning."

This we understand to be the general law of contracts. See, also, *Garrison v. U. S.*, 7 Wall. 688-692. This view of the question is, in our opinion, strengthened by the following considerations: When Goulding & Co. sent the first telegram of the 21st of August, they proposed a change in the contract,—a contract which was itself without ambiguity, and distinctly understood. The telegram was not an inquiry, as stated in one of their letters, but it was an earnest solicitation for a change of the contract. Then they were under a peculiar obligation to correct instantly, by the most expeditious method, any misapprehension of their proposal which the defendants had given. With such conditions, a failure to comply with the original contract, superinduced by the plaintiffs' original telegram by a misunderstanding of the same which it was the duty of the plaintiffs to correct, cannot, in our opinion, be a cause of action. The question is, however, by no means free from difficulty, and its determination in this manner upon a motion to direct a verdict, counsel on both sides agreeing that the decision must finally depend upon the construction of the written evidence, will enable the plaintiffs readily and speedily to have their rights again considered, which I trust may be done. At present, however, we feel obliged to direct a verdict for the defendants.

UNITED STATES *v.* DURWOOD.

(District Court, D. Washington, W. D. February 10, 1892.)

1. CUSTOMS DUTIES—VIOLATION OF LAWS—BREAKING OPEN BONDED CARS.

One who maliciously breaks into a bonded freight-car, containing merchandise in transit through the United States between two places in the British provinces, is not punishable under Rev. St. U. S. § 2998. That section is applicable only to cars *en route* between certain named ports of entry in the United States and certain other places in the United States.

2. SAME.

As Act Cong. July 28, 1866, (Rev. St. § 8005,) authorizing transportation of merchandise in bond through the United States to places in the adjacent British provinces, prescribes no penalties, no criminal prosecution can be founded upon it for breaking open a car in transit.

At Law. Prosecution of James Durwood for breaking open and entering a bonded freight-car on the Northern Pacific Railroad. Jury instructed to return a verdict of not guilty.

P. C. Sullivan, Asst. U. S. Atty.
Garvey & Smith, for defendant.

HANFORD, District Judge. The defendant is indicted under section 2998, Rev. St., for maliciously breaking into and entering a freight-car on the Northern Pacific Railroad containing merchandise, delivered for transportation through the United States from Victoria, in British Columbia, to Montreal. It is my opinion that the statute referred to is not applicable to the case, and that the defendant cannot be punished for the acts charged against him. Section 2998 of the Revised Statutes is section 37 of the act of July 14, 1870, entitled "An act to reduce the internal taxes, and for other purposes." 16 St. p. 256. Said act provides for the transportation of imported merchandise in bond from certain named ports of entry in the United States to certain other places in the United States, but contains no provision for the transportation of bonded merchandise towards a destination in a foreign country; nor is it so related to the other statutes which are in the Revised Statutes, grouped together under the title of "The Bond and Warehouse System," as to subject a person to punishment under the penal clause for interference with merchandise in transit through the United States to a foreign destination. The law authorizing transportation through the United States of merchandise in bond *en route* to places in the adjacent British provinces (section 3005, Rev. St.) is found originally in the act of July 28, 1866, (14 St. p. 328.) No penalties are therein prescribed; therefore no criminal prosecution can be founded upon it.

The jury is instructed to render a verdict of not guilty.

OAKES v. TONSMIERRE *et al.*

(Circuit Court, S. D. Alabama. June Term, 1883.)

1. TRADE-MARKS—TRANSFER—FRAUD ON PUBLIC.

The firm of Probasco & Oakes manufactured and sold candies under the name of "Excelsior Candies," but, finding this name unsatisfactory, afterwards called their goods "Oakes' Candies." Oakes sold out to Probasco, including in the bill of sale the right to use this name. He then entered the employ of Probasco, and continued therein several years, superintending the making of the candies, during which time Probasco devised and used a trade-mark consisting of two oak trees, with the words "Oakes' Candies" printed across them. Oakes subsequently quit Probasco's service, and several years later the latter sold the business, together with the right to use the trade-mark. *Held* that, as the trade-mark was used to denote candies made by the firm and was not a guaranty that they were made by Oakes personally, the use thereof was not a fraud on the public, and the sale of the right thereto was valid.

2. SAME—BONA FIDE PURCHASER.

The bill of sale by Oakes to Probasco stipulated that the right to use the name "Oakes' Candies" should cease on a sale of the business by Probasco to a stranger, and should then revert to Oakes; but the purchaser from Probasco was not aware of this condition. *Held* that, being a *bona fide* purchaser, he was not bound thereby.

3. SAME.

As the *bona fide* purchaser had good title to the trade-mark, he could convey it to another, even though the latter had notice of the stipulation.