of Shuff v. Morgan was decided in the year 1821, and has never been overruled or called in question; so that, so far as concerns the provision as to the tale, the property would have passed.

There remains the question as to what the court must say as to the effect of the arrangement about the price. The facts necessary to be considered are these: A debtor is in failing circumstances. A sale of his whole stock of goods is made. The consideration is $40,000. For this amount checks are given. Before the checks are paid or presented, a creditor levies an attachment. By a secret agreement between the seller and the purchaser, the whole price ($40,000) is placed in trust in the hands of a third person, to indemnify the purchaser against loss by service of the attachment. The legal effect of such a qualification of an agreement to sell is to subordinate the question of who shall receive the consideration to the question as to the validity of the sale. The trustee holds in trust for the vendor in case the sale shall be held to be valid, and for the vendee in case it shall be held to be void, and it is a secret trust. In the eyes of the law the property has been placed beyond the reach of the creditors by the sale. By this secret trust the consideration for the sale also is placed beyond their reach. It is a sale if the attachment is defeated, and no sale if it is maintained. To render a sale valid there must be price. That price cannot conditionally belong to the purchaser. Nor can the indications of a payment be held out which are not according to fact, when the necessary effect of such indications must be to baffle the creditors of the vendor. I think such a transaction, before the checks have been paid, ingrafts upon the sale a qualification which becomes a part of the original agreement of sale, and characterizes it precisely as if it had been made along with it, and that courts must declare a transaction with such a feature invalid, and ineffectual to defeat the rights of the attaching creditor to the extent of his attachment.

The conclusions of law from the facts above found are:

1. That the attachment was dissolved by the insolvency proceedings, in which the defendants made, and the proper court accepted, a surrender of all their property. Section 933, Rev. St., (9 Stat. 213, 214;) especially the intent and meaning of the statute, as shown in the title and as declared in the body of the act.

2. That the plaintiffs have and recover against the defendants $21,728, with interest, as prayed for in their petition, and their entire costs in the cause, and upon the attachment up to the time of the surrender, without any lien or privileges resulting from the attachment.

3. That the intervention of A. Shwartz & Sons be dismissed, and that they pay the costs of the intervention.

McHOSE et al. v. EARNSHAW.

(Circuit Court of Appeals, Third Circuit. April 17, 1893.)

1. ACTION FOR PRICE OF GOODS—OCEAN FREIGHT—REMISSION OF STEVEDORE CHARGES.
   The owner of foreign ore sold a portion thereof to defendants under an agreement which contained this clause: "Freight rate. The above prices [for the ore] are based on an ocean freight rate of 12 shillings per ton. All freight over 12 shillings to be added to the invoice as part of the price of the ore, and all freight under 12 shillings to be deducted from the invoice." *Held*, in an action to recover the price of part of the ores, that defendants were not entitled to the benefit of a rebate on unloading which plaintiff received from the stevedores as a commission for procuring them the job, the same not being a reduction of ocean freight. 48 Fed. Rep. 589, affirmed.
2. SAME—FALSE REPRESENTATIONS—MEASURE OF DAMAGES.
   Defendants were induced to enter into the contract for the ores by plaintiff's false statements, but accepted the ores after discovering the falsity of the statements. *Held*, that the true measure of damages for the deceit was the difference between the contract price of the ore and its value in the market at the time, unaffected by the false representation, and not such sum as the jury might find from all the evidence was the value of the ores to defendants. Peek v. Derry, 37 Ch. Div. 541, and Smith v. Bolles, 10 Sup. Ct. Rep. 39, 132 U. S. 125, distinguished.

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

At Law. Assumpsit by Alfred Earnshaw against Isaac McHose and others, trading as Isaac McHose & Sons, to recover the price of goods sold and delivered. There was a verdict for plaintiff, and motions to increase and diminish the same were subsequently made and denied. 48 Fed. Rep. 589. From the judgment entered on the verdict, defendants bring error. Affirmed.

F. P. Prichard and John G. Johnson, for plaintiffs in error.

R. C. McMurtrie, for defendant in error.

Before DALLAS, Circuit Judge, and WALES and GREEN, District Judges.

DALLAS, Circuit Judge. This was an action of assumpsit by the defendant in error against the plaintiffs in error, upon a written contract dated January 29, 1890, by which the defendant sold to the plaintiffs certain ore, at prices named, to be shipped in as nearly equal monthly proportions as possible, and to be delivered free on board vessels at Philadelphia. The contract recited that the defendant had purchased from the Marabello Iron Ore Company the total output of their mines for the 12 months commencing March 1, 1890, and the sale to the plaintiffs was of one third of that ore. The contract contained this clause:

"Freight rate. The above prices [for the ore] are based on an ocean freight rate of twelve shillings per ton. All freight over twelve shillings to be added to the invoice as part of the price of the ore, and all freight under twelve shillings to be deducted from the invoice."

Several cargoes were delivered and paid for, but others, subsequently delivered, were not paid for, and to recover a balance