

ant is fatal to his case. The complainant was made president and general manager of the company, and he accepted the position, and, so long as there was a prospect that the speculation might prove remunerative, he retained the stock and the control of the company's affairs. When the tender back of the stock was made to the defendants, in January, 1891, the whole situation had greatly changed, and the parties could not be placed substantially in the position they occupied when the contract for the sale of the stock was made.

For these reasons it must be held that the complainant has failed to make out a case which entitles him to a rescission of the contract of sale. That the expectations which he had formed at the time he assumed the management of the affairs of the Hawkeye Metal Company have not been met is undoubtedly true, but that seems to be equally true of the expectations of the defendants. The enterprise was largely speculative, and was so known to be to the complainant when he connected himself therewith. Having retained the control of the affairs of the company for so long a period, and having retained the stock sold him for months after he had ceased to work in the interest of the company, he cannot expect that a court of equity will now throw the whole burden of the failure of the speculation upon the defendants, and relieve him wholly therefrom.

The bill will therefore be dismissed upon the merits, at the cost of complainant.

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MESSINGER v. NEW ENGLAND MUT. LIFE INS. CO.

(Circuit Court, W. D. Pennsylvania. January 15, 1894.)

No. 16.

RES JUDICATA—DISMISSAL OF BILL.

A decree dismissing a bill, made after sustaining a demurrer (which set up that the facts alleged constituted no cause of action) and no application to amend, is a final adjudication, and bars a subsequent suit between the same parties on the same subject-matter.

In Equity. Bill to cancel and rescind a release. Heard on a plea in bar. Plea sustained and bill dismissed.

D. W. Cox, Lorenzo Everett, and S. C. McCandless, for complainant.

A. A. Leiser and Shiras & Dickey, for defendant.

BUFFINGTON, District Judge. A bill in equity is here filed by I. N. Messinger, administrator d. b. n. of Joseph C. Raudenbush, against the New England Mutual Life Insurance Company, to cancel and rescind a release executed by a former administrator of all claims under a policy issued by the respondent company upon the life of said decedent. To this bill a plea is filed, setting forth that a final decree had been entered in favor of the respondent (which was unappealed from) in a suit in this court, at No. 34, November term, 1892, between the same parties, and involving the same subject-matter. In the former case the respondent demurred to the bill because it did not disclose facts sufficient to constitute a cause

of action, which demurrer was sustained by the court; and subsequently, no application to amend being made, a final decree was entered, dismissing the bill. Such a decree is a final judgment of the rights of the parties, and is a bar to a subsequent suit between the same parties on the same subject-matter. *Alley v. Nott*, 111 U. S. 473, 4 Sup. Ct. 495; *Bissell v. Spring Valley Tp.*, 124 U. S. 232, 8 Sup. Ct. 495.

The parties to the present suit, and the subject-matter, being the same as those in the former suit, we are of opinion the plea is well founded, in point of law, and presents a complete defense to the bill, and the latter should be dismissed.

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NETHERLAND-AMERICAN STEAM NAV. CO. v. HOLLANDER.

(Circuit Court of Appeals, Second Circuit. January 12, 1894.)

No. 48.

1. PARENT AND CHILD—LOSS OF SERVICE—PARENT'S RIGHT OF ACTION FOR INJURIES.

The right of action of a father for an injury to his minor child is based on the parental relation, not that of master and servant, and he is entitled to be indemnified for his expenses in the care and cure of the child, and for loss of services past and prospective.

2. SAME—DAMAGE—PROVINCE OF JURY.

Whether a girl who was injured at five years of age, and had not recovered at the time of the trial,—over a year later,—could render any service, past or prospective, of pecuniary value to her father is a question of fact which the jury may determine upon consideration of the injury, the continued disability, and the age and sex of the child, without other evidence as to ability to render services.

In Error to the Circuit Court of the United States for the Southern District of New York.

At Law. Action by Morris Hollander against the Netherland-American Steam Navigation Company for injuries to his minor child, brought in the supreme court of the state of New York, and removed therefrom by defendant. Verdict and judgment for plaintiff. Defendant brings error. Affirmed.

In charging the jury the court said, among other things: "In assessing the value of damages, you are to take into consideration that it is only the loss to the father for which this suit is brought, and which this particular jury is to assess. He has given testimony of money paid out, which aggregates about twenty-one dollars. Besides that, he is entitled to such sum for the loss of services of his child as may be reasonable in view of what the circumstances of the case are, to wit, the age of the child, and the amount of services which it might have rendered to him from the date of the accident until the present time. He is also entitled to such compensation as is proper to take the place of any services of this child which he may lose in the future in consequence of the accident. You are not to guess at that. You are not, without evidence, to assume that because the child's arm was broken two years or a year and a half ago, and at this moment of time she does not use her arm as her brother does his, that the child is going to be disabled; and I know of no evidence in this case as to what the probabilities are. You are not entitled to guess at that. You must reach your conclusion from evidence."