

Seventh. Whether the rule of damages is, as stated in the opinion of the court, "limiting the recovery to the value and the interest from the time of loss, unless there is a loss of freight which would otherwise have been earned upon the particular voyage in which the vessel is lost;" or whether the following should not be added: "or upon a contract, the performance of which had been entered upon at the time of the loss."

The question upon which appellant asked a reargument was as follows:

As to whether or not the appellant's exception to the allowance of the claims of seamen, amounting to two thousand eight hundred and five francs and twenty-five centimes, should not be sustained, and said claims be disallowed on the ground that said claims were not proved, and for such other relief as the appellant may be entitled to receive.

Frank D. Sturges, for appellant.

Robert D. Benedict, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. However desirable it might be that a review of this case be had in the supreme court, in view of the fact that the four judges who heard it at circuit and in this court are divided in opinion, we cannot see that it is a proper case for the certification to that court of specific questions or propositions of law. No new or difficult questions of that character are presented, and the mixed issues of law and fact could only be reviewed satisfactorily upon an examination of the entire record.

The amount allowed by the commissioner, and approved by the district court, (f2,805. 25c.) for lost effects of seamen of the Iberia, should be reduced in the amount of f2,365. 25c. by reason of insufficiency of proof. As to the residue, (f540.) though there is the same lack of evidence, we do not find a proper exception to the allowance.

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EDISON ELECTRIC-LIGHT CO. v. UNITED STATES ELECTRIC-LIGHTING CO.

(Circuit Court of Appeals, Second Circuit. October 22, 1892.)

No. 35.

APPEAL—PROCEEDING BELOW AFTER AFFIRMANCE—SUSPENSION OF INJUNCTION. The affirmance, in a circuit court of appeals, of a preliminary order or interlocutory decree granting an injunction, does not deprive the circuit court of its inherent power temporarily to suspend such injunction.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Motion to amend mandate on affirmance of interlocutory decree granting an injunction. Denied.

For report of the decision on appeal from the decree, see 3 C. C. A. 83, 52 Fed. 300.

Edmund Wetmore, for the motion.

Clarence A. Seward, opposed.

Before LACOMBE and SHIPMAN, Circuit Judges.

**PER CURIAM.** The motion to amend the form of mandate in this case by inserting a clause to the effect that the same is "without prejudice" to an application to the circuit court for a further suspension of the injunction is denied. The affirmance in this court of a preliminary order or an interlocutory decree granting an injunction does not operate to deprive the circuit court of the power, inherent in it, temporarily to suspend such injunction, upon sufficient cause shown, after proper notice, whenever the ends of justice call for the exercise of such power.

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HORST et al. v. MERKLEY et al.

(Circuit Court, N. D. California. January 17, 1894.)

No. 11,605.

**CIRCUIT COURTS—JURISDICTIONAL AMOUNT—REAL CONTROVERSY.**

When it appears from the plaintiff's own testimony that one of the causes of action pleaded never had any existence, and the remaining matters are not of sufficient value to support the jurisdiction, the case must be dismissed.

**At Law.** Action by Paul R. G. Horst and others against R. J. Merkley and others. Dismissed for want of jurisdiction.

Boyd, Fifield & Hoburg, for plaintiffs.

Robert T. Devlin, for defendants.

**GILBERT, Circuit Judge.** The plaintiffs bring an action against the defendants for the recovery of moneys advanced, and for damages sustained by reason of the breach of a contract. On the trial the question arises whether or not the matter in dispute is sufficient to bring the case within the jurisdiction of the court. It is alleged in the complaint that the plaintiffs and the defendants entered into a contract whereby the latter were to sell and deliver to the former 24,000 pounds of hops growing upon certain premises, the same to be delivered between August 15 and October 1, 1891, for which the plaintiffs were to pay defendants 17 cents per pound; that under said contract the plaintiffs made advances of money to the defendants, and the defendants delivered to plaintiffs on August 21, 1891, 10,046 pounds of the hops, leaving a balance due the plaintiffs on said advances in the sum of \$775.73; and that the defendants refused to deliver the remainder of the said hops under the contract, to the plaintiffs' damage in the sum of \$1,500; and for both said sums demand is made for judgment. The defendants admit the claim for advances, but deny that they failed to perform the contract, and deny the plaintiffs' claim for damages, and for counterclaim demand damages of \$1,000 against the plaintiffs, alleging that the plaintiffs refused to receive the hops under the contract.

The only evidence offered on the trial concerning the breach of contract alleged in the complaint was that of one of the plaintiffs. He testified that in the latter part of February, 1892, some four or