

sequence of a breach of warranty is both the just and legal measure of a purchaser's damages. The rule is well settled that the damages recoverable of a manufacturer for the breach of a warranty of machinery which he contracts to furnish and place in operation for a known purpose are not confined to the difference between the machinery as warranted and as it proves to be, but include such consequential damages as are the direct, immediate, and probable result of the breach. The charge of the court was in accordance with this rule. It was just and clear. It commends itself to the judgment, and is amply sustained by the authorities. 3 Pars. Cont. (7th Ed.) p. 212; 2 Suth. Dam. § 672; Mining Syndicate v. Fraser, 130 U. S. 611, 622, 9 Sup. Ct. 665; Poland v. Miller, 95 Ind. 387; Sinker v. Kidder, 123 Ind. 528, 530, 24 N. E. 341; Swain v. Schieffelin, 134 N. Y. 471, 31 N. E. 1025; Passenger v. Thorburn, 34 N. Y. 634; Ferris v. Comstock, Ferre & Co., 33 Conn. 513.

One hundred and eighteen supposed errors are assigned in the record of this case. We have carefully considered them all, and are of the opinion that they disclose no substantial error in the trial below. We have discussed the more important questions they present, and indicated the reasons for the conclusions we have reached upon them. Most of these supposed errors relate to the questions we have considered, and no good purpose would be served by extended notice of the remainder. The judgment below must be affirmed, with costs, and it is so ordered.

GULF, C. & S. F. RY. CO. v. JACKSON.

SAME v. CURB et al.

(Circuit Court of Appeals, Eighth Circuit. September 24, 1894.)

Nos. 424 and 425.

BILL OF EXCEPTIONS—TIME OF FILING—CONSENT TO ENLARGEMENT.

An indorsement on a bill of exceptions, "We agree upon the above and foregoing bill of exceptions," signed by opposing counsel during an extension of time for filing, made by an ex parte order in vacation, held binding as a consent to the enlargement of the time for settlement.

In Error to the United States Court in the Indian Territory.

On petitions of plaintiffs in error for rehearings. These were two suits brought by the Gulf, Colorado & Santa Fé Railway Company against Jo Jackson, and W. R. Curb and Rosella Curb, respectively.

J. W. Terry and P. L. Soper, filed brief in support.

W. B. Johnson, A. C. Cruce, and Lee Cruce, filed brief opposing same.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

SANBORN, Circuit Judge. Petitions for rehearings of these cases, on the ground that the defendants in error consented to the extension of the time for filing the bills of exceptions, have been presented and considered. During the trial term in the court

below, the time for filing the bills of exceptions in these cases was extended, by order of the court, to December 24, 1893. In December, 1893, and after the term had lapsed, the judge made an ex parte order extending the time for filing the bills until January 23, 1894, and these bills of exceptions were not settled or filed until January 13, 1894. On this state of facts, orders were made at this term affirming the judgments below on the ground that the judge had no power to extend the time to file these bills by an ex parte order in vacation, without the consent of the defendants in error to such extensions, in accordance with our decision in *Railway Co. v. Russell*, 9 C. C. A. 108, 60 Fed. 503. It now appears that the bills of exceptions contained a statement of the substance of the ex parte orders extending the time to prepare and file them, and that some time in January, 1894, before they were settled or filed, they were presented to the counsel for defendants in error, one of whom indorsed upon each of them the following words, "We agree upon the above and foregoing bill of exceptions," and signed this agreement. In our opinion this was a plain consent to the enlargement of the time for the settlement of these bills, and the defendants in error ought not to be permitted to revoke or evade it now, when the cases have been prepared for hearing on the merits in this court in reliance upon their waiver of all objections to the bills of exceptions. These motions for rehearings are granted, the orders striking out the bills of exceptions and affirming the judgments are set aside, and the cases reinstated for hearing on the merits.

UNION PAC. RY. CO. v. BARNES.

(Circuit Court of Appeals, Eighth Circuit. October 8, 1894.)

No. 440.

1. DECEIT—SALE OF LANDS.

Neither an agreement to sell land and cause a good title thereto to be conveyed to the purchaser at a future time, nor a deed without covenants, which recites the supposed source of the grantor's title, and purports to grant and convey the land, is sufficient to support an action against the vendor for false and fraudulent representation as to his title, where he makes the agreement and deed in good faith, under color and claim of title, in the honest belief that the title and its source are good, although in fact they are both invalid.

2. VENDOR AND PURCHASER—RECOVERY OF PURCHASE MONEY.

An action will not lie by a purchaser to recover the purchase money on failure of title in the absence of fraud or covenants to secure the title.

3. LIMITATION OF ACTION—ACTION FOR PURCHASE MONEY.

A right of action, if any, for purchase money paid, on failure of title to realty, accrues when the money is paid and the deed obtained.

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

This was an action originally brought by Thomas H. Barnes against the Union Pacific Railway Company to recover for alleged false representations as to the ownership of land purchased by plaintiff of defendant. The case was first heard in the court below