

tickets to 48, leaving the weak and the timid to struggle for preference with the strong and the selfish. In legal effect it was as if the agent had resold the room which he had previously sold to the libellant. One of the 19 rooms engaged by telegram was hers; the agent had promised to reserve it for her. Not only did he fail to do so, but by his own affirmative act he made the securing of a stateroom impossible for some and doubtful for all. If after the conversation in Buffalo he had failed to telegraph at all, it will hardly be doubted that the libellant would have just cause of complaint, but this would have been no more disastrous to the libellant than the course he did pursue. It seems plain that the entire difficulty arose through the carelessness of the respondent's agent at Buffalo. No one else is shown to be at fault. The law should offer a remedy for every wrong. To say that the libellant has no redress for the treatment she received is to confess the utter inadequacy of the law. For 42 hours she was without sleep and deprived of the ordinary conveniences of life and, of course, suffered great annoyance and discomfort.

It is difficult to estimate the damages in these cases where no permanent disability or sickness results, but it is thought that for the discomforts to which she was subjected the sum of \$75 is but a just and reasonable compensation. Decree for \$75 and costs.

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#### ANTHONY v. HITCHCOCK.

(Circuit Court, W. D. Michigan. January 4, 1896.)

##### CONTRACTS—RESTRAINT OF TRADE—GENERAL RESTRICTION.

Plaintiff's declaration alleged that he was engaged in conducting a coal and fish business at a dock on a navigable river, and was the owner of adjoining land, with riparian rights, suitable for carrying on a similar business; that he sold such land and riparian rights to defendant, and defendant, in consideration of such sale, agreed not to buy or sell coal or traffic in the buying or selling of fish, and not to do anything that would conflict with the coal or fish business of plaintiff; yet that defendant, since the execution of such agreement, had leased the premises purchased from plaintiff to a firm of coal merchants, for the purpose of carrying on a coal and fish business, in competition with that of plaintiff, to his damage. *Held*, that it could not be adjudged that the contract, as alleged, was contrary to public policy, as being in restraint of trade, and that, upon such declaration, it appeared that the plaintiff had a good cause of action.

##### On Demurrer to Plaintiff's Declaration.

The declaration in this cause was in assumpsit, and, in substance, alleged: That heretofore, to wit, on the 24th day of February, A. D. 1892, at the village of Detour, in the county of Chippewa and state of Michigan, said plaintiff was engaged in the business and occupation of keeping and operating a certain dock in said village, leased by him from one George Dawson for a term of years ending December 1, 1898, at an annual rental, situated on the shore of St. Mary's river, for the purpose of storing and handling coal, and selling the same to steamboats, tugs, and vessels using and passing through said river, and to purchasers generally, and for the purpose of carrying on the business of handling, buying, and selling fish, and at said dock had an established fish business, of great value to him, to wit, \$20,000 per annum; and that said plaintiff was also the owner of certain pieces or parcels of land

situate in the village of Detour, fronting upon the said river (in said declaration fully described), with the riparian rights appurtenant thereto, upon which piece or parcel of land was a certain other dock suitable for carrying on a coal and fish business in competition with the coal and fish business of plaintiff, and to which were appurtenant riparian rights and privileges that might be used for extending and enlarging said dock. That the defendant, in part consideration of the execution and delivery by plaintiff and wife of a warranty deed of the land and property in the declaration described, on the day and year aforesaid, made and entered into a written agreement with plaintiff, wherein and whereby the defendant agreed and promised, among other things, not to purchase or offer for sale any coal, except such as said defendant should require for his own use, to any steamers, boats, or persons, and also not to traffic in the buying and selling of fish, except fish that might be caught with his own nets, and not to do anything that would conflict with the coal or fish business of plaintiff (a copy of which agreement was attached to the declaration, and made a part thereof, and marked "Exhibit A"). Yet said defendant, disregarding his said promise, etc., had since the execution of said agreement done certain things that conflicted with the coal and fish business of said defendant, as follows: That defendant, by a written lease (a copy of which was attached, etc.), had leased to Pickands, Mather & Co., coal merchants of Cleveland, Ohio, the dock appurtenant to the premises deeded by plaintiff to defendant, for a period of five years from and after December 10, A. D. 1893, at an annual rental of \$3,000, "for the purpose of carrying on on said dock a coal and fish business," and had permitted said Pickands, Mather & Co. to take possession of said dock property, and to enlarge, strengthen, and extend the same, and to occupy and use the same, in conducting their own coal and fish business, in competition with that of plaintiff. Wherefore, and by reason of the competing coal and fish business permitted to be conducted on said dock, and by reason of the premises, said coal and fish business of plaintiff had been subjected to an injurious competition, and said business had decreased, and the profits therefrom had been reduced, and the plaintiff had suffered damages, to wit, etc.

Exhibit A, attached to said declaration, runs as follows:

"This agreement, made and entered into this 24th day of February, A. D. 1892, by and between Thomas C. Anthony, of Sault Ste. Marie, Michigan, and W. D. Hitchcock, of Chicago, Ill.: The party of the first part, Thos. C. Anthony, has this day sold and conveyed unto the said W. D. Hitchcock all the property at Detour, Michigan, known as the Hurd & Heinstein and Moiles property, for the sum of ten thousand dollars. And the said W. D. Hitchcock, party of the second part, agrees with the said Thomas C. Anthony to not purchase or offer for sale any coal, except what coal they may require for their own use, to any steamers, boats, or persons, and also to not traffic in the buying or selling of fish, except fish that may be caught with his own nets, or do anything that will conflict with the said coal or fish business of the said Thomas C. Anthony, and further agrees to not act as general agent and ticket agent or in any capacity for any steamer or line of boats, nor to do any business whatever with said steamer or boats of any kind, as receiving and shipping of freight, merchandise, etc., except to receive their own goods and merchandise, and ship out same, when necessary, for the period of seven (7) years from date hereof. And, further, that the said party of the second part agrees that while said Anthony gives full warranty deed, as required by said Hitchcock, yet said sale is made with full knowledge of said Hitchcock of the conditions of the deeds given by George Dawson, a former owner, regarding restrictions as to dock or shipping privileges, and said Anthony shall not be held responsible for any damage to said Hitchcock by reason of said restrictions in said Dawson conveyances. And, further, that the said Anthony may have the contents of one of the ice houses on said premises the present season, the same having been recently filled by said Anthony, together with the privilege of entering on said premises, and getting said ice at his will, during the coming season.

[Signed] W. D. Hitchcock.

"T. C. Anthony."

The demurrer was based upon the contention that the contract set up in the declaration was opposed to public policy, and therefore void.

H. M. Oren, for plaintiff.

M. F. McDonald, for defendant.

SEVERENS, District Judge (after stating the facts as above). The declaration states that, in part consideration of the conveyance of land, the defendant agreed, among other things, that he would not do anything which would conflict with the coal or fish business of the plaintiff. It then proceeds to allege that the defendant had leased the premises conveyed to other parties for the purpose of carrying on the same business as that of the plaintiff, and had permitted them to enlarge and occupy and use the dock thereon in conducting that business in competition, etc. These premises are alleged to have been in the vicinity of the plaintiff's place of business on the same stream, and the business is alleged to be a competing business with that of the plaintiff, and injurious thereto, and it is alleged that the plaintiff has suffered therefrom a diminution of business and reduction of profits, etc.

The leasing of the premises "for the purpose" of the conducting by others of a business in competition with that of the plaintiff, and permitting them to carry on the competing business thereon, would appear to me to be a breach of an agreement not to do anything which would conflict with the plaintiff's business. I think, therefore, that the declaration is sustainable upon grounds which do not necessarily involve the question at large, how far contracts must be held void as being in restraint of trade. The modern decisions seem to be settling down upon the test whether the restriction is one limited to the protection of the plaintiff's business. If it is, it is recognized as reasonable and lawful; and otherwise if not so limited.

Upon the argument it was contended that the agreement was for an unlimited restraint of the defendant's doing those kinds of business anywhere. The plaintiff contends that, upon a fair construction of the agreement, the restraint is limited to the premises sold to the defendant. And there are several considerations leading to that conclusion. There is the recital of the conveyance of the premises. They were adapted to such business. The alternative words, "or do anything that will conflict with the said coal or fish business" of the plaintiff, are an implication of a limitation. And, further, it is a rule of construction that, if the words will bear an interpretation adapted to express a lawful purpose, that interpretation will be given, so that the agreement shall have effect rather than fail utterly. But the declaration does not allege such a contract as this would be with such implications in respect of the words which relate to the defendant going into the coal or fish business; and, upon demurrer, the court must treat the contract as it is alleged in the pleadings. I do not, therefore, decide this question of construction. But I am satisfied that the stipulation that the defendant should not do anything to conflict with the plaintiff's business is valid, as alleged, and upon a sufficient consideration.

The demurrer is overruled, and leave to plead over is allowed to the defendant.

## KNIGHT et al. v. DAVIS CARRIAGE CO.

(Circuit Court of Appeals, Fifth Circuit. January 14, 1896.)

## BAILMENT—RIGHTS OF BAILEE—ACTIONS.

One S. was doing business as a dealer in carriages, and had in his hands, on consignment from plaintiff, a number of carriages. Hearing that S. had given a bill of sale of his stock to one B., plaintiff sent an agent to the town where S. did business, who, after investigation, finding that plaintiff's carriages were not included in the bill of sale, but were in the possession of B., made an arrangement with B. by which B. agreed to hold all plaintiff's goods, for plaintiff, against any and all other persons, and thereupon abandoned legal proceedings which he had been about to take to recover possession of the carriages for plaintiff. Shortly afterwards, plaintiff's carriages, among other property, were levied upon by the marshal, under a writ of attachment, issued at the suit of another creditor of S. B. then filed an affidavit and bond, under the local practice, as claimant of the attached property, including plaintiff's carriages, and the same was delivered to him by the marshal. Plaintiff subsequently sued the marshal for conversion of the carriages, and the marshal set up these facts. An officer of plaintiff, the same who had made the arrangement with B., testified, by deposition, to such arrangement, and the same was not disputed, except by a subsequent deposition of the same officer, given to meet an amendment of defendant's pleading, in which he testified that B. was not "authorized" to make the claim. *Held*, that as it was undisputed that B. was made bailee of plaintiff's carriages, to hold the same for plaintiff against all other persons, he had the right, for himself and plaintiff, to maintain any proper action for their protection, and to make the claim under the local practice, to protect his possession; and, such authority following as a matter of law from his possession as bailee, it was error to instruct the jury that, if they believed B. was not authorized by plaintiff to make the claim, they should find for the plaintiff, and to refuse to instruct them that as, upon the surrender of the carriages to B., he alone became responsible for them, they should find for the defendant, the marshal.

**In Error to the Circuit Court of the United States for the Northern District of Texas.**

This suit is for damages for alleged conversion of property. The action was commenced in the circuit court of the United States for the Northern district of Texas, at Dallas, by the Davis Carriage Company, a corporation under Ohio laws, as plaintiff, against George A. Knight, United States marshal of the Northern district of Texas, and his official bondsmen, all citizens of the state of Texas; and by a first amended original petition, filed February 14, 1893, the plaintiff alleged that on January 27, 1892, it was possessed of and owned 56 buggies and vehicles, of the value of \$4,271.57; that the defendant Knight was then the qualified and acting marshal of the United States for the Northern district of Texas, and that, as such officer, he had executed a bond in terms of the law, with the other defendants, John Herrman, Benjamin N. Bryant, and W. K. Wheelock, as his sureties; that on the 27th day of January, 1892, said marshal had in his hands, in his official capacity, certain writs of attachment issued out of the circuit court of the United States for the Northern district of Texas, in certain cases wherein the Racine Wagon & Carriage Company and others were plaintiffs and J. B. Simpson was the defendant, which said writs commanded the said marshal to seize the property of the defendant J. B. Simpson sufficient to make the sums of money mentioned in said writs; that the said marshal, acting under and by virtue of the said writs, did unlawfully seize and take possession of the property of the plaintiff, viz. the 56 buggies and vehicles, an itemized list of which, with the value of each, the plaintiff attached as an exhibit to its pleading; that the said marshal thus converted to his own use