

values of watches vary so widely that no presumption that the value of the shipment exceeded \$50 is raised by the statement of its contents. I must therefore assume that the consignor was content to accept the sum of \$50 as the equivalent of the contents of this package, if it was lost in transit. True, the proof shows it to have been worth more than that, but it also shows that the charges of the carrier were regulated by the values, and that there was a difference in the care taken of packages when the value was stated and those on which no value was stated; and it seems to me so reasonable that a carrier should be entitled to know the value of property which it undertakes to transport, that I cannot believe the legislature of Illinois intended to prohibit the limitation of liability made by this contract, when the consignor refused to disclose the value.

The issue is found for the plaintiff, and damages assessed at \$50; and plaintiff must recover costs, as this suit originated in the state court, and was removed to this court by defendant.

NOTE.—See *Muser v. American Express Co.* 1 FED. REP. 382.

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**KIMBALL and others v. THE TUDOR COMPANY.**

(Circuit Court, D. Maine. ———, 1880.)

**CONTRACT—DEMURRAGE—CONSTRUCTION.**

*Assumpsit* by the owners of the ship Eclipse against the Tudor Company, upon the following account annexed to the writ: "For 7 days' demurrage, at \$127.37 per day, \$892.99." This was amended at the trial to nine days' demurrage, at the same rate, \$1,148.13.

On the sixth of July, 1878, the plaintiffs, through Mr. Burt, a broker of Boston, chartered the ship, which was then building at Bath, to the defendants, to carry a cargo of ice from Wiscasset, Maine, to Madras and Calcutta. The contract was made orally by Mr. Burt with Mr. Field, duly acting

for the defendants, who refused to put it in writing, as being contrary to the usage of the company, but made a memorandum in a book used for that purpose, which was read by Mr. Burt. It was understood that the ship would be ready in about a month, and that a little longer time would make no difference to the defendants. Mr. Burt testified that the defendants agreed to load the ship "when ready;" Mr. Field did not remember using those words or any equivalent expression. The memorandum made no mention of the time. Mr. Kimball, the agent of the ship, testified to a conversation a few days after the sixth of July, in which similar language was used, that the defendants would load the vessel when she was ready, but that they were in no hurry. This was contradicted or not remembered by the other parties to it.

The defendants afterwards chartered of the Messrs. Sewall another ship, the Cheesborough, then building at Bath, for a similar voyage to Bombay. This second vessel was launched July 20th, a few days before the Eclipse, and appeared likely to be ready first; and Mr. Kimball testified that he called upon Mr. Minot, and, in the presence of Mr. Field, those two being the business managers of the defendants, offered to agree that the Cheesborough should be loaded before his vessel, provided the defendants would load her immediately, which offer was declined, Mr. Minot saying that he intended to load the Eclipse first. Mr. Minot and Mr. Field did not recollect this conversation. There was afterwards another conversation between the same parties, in which Mr. Minot said, either that the ship first ready should be first loaded, or that circumstances must decide the question when the time came.

Wiscasset is four or five hours distant from Bath by water, and about a half an hour by land. August 7th, the Cheesborough was taken round to Wiscasset; but a third ship, the Norwegian, was already there, and was loaded first, though delayed a short time by an accident. On the same day, August 7th, Mr. Kimball wrote to the defendants that the Cheesborough had gone to Wiscasset, and said that the Eclipse would

be ready August 13th, and asked if she was to load next after the vessel which should be loading when she was ready.

August 9th, Mr. Kimball wrote that he had been to Wiscasset, and heard from Mr. Sullivan, the defendants' agent there, that the Norwegian was to be loaded immediately, and asked whether the Eclipse was to follow the Norwegian, adding: "We are ready now to go to Wiscasset any day." He received no answer to either of his letters.

Mr. Kimball went to Wiscasset on the thirteenth of August, and found the Norwegian loading, and the Cheesborough lying in port, waiting her turn. He went to Boston again on the 15th, and asked the agents of the defendants whether his ship was to follow the Norwegian, and received no definite answer. August 16th, he wrote that the ship would go to Wiscasset on the next day to load, "as per agreement," and demanded that it should have the berth next after the Norwegian. August 16th, the Eclipse received her register, and on Saturday, the 17th, was towed to Wiscasset, and arrived there between 3 and 4 o'clock in the afternoon. The Norwegian was then loaded and about to haul out of the berth, and the Cheesborough had made fast a line to the wharf, in preparation for hauling in.

The Cheesborough was loaded before the Eclipse. Work on the latter was begun on Monday, August 26th, and finished Wednesday, September 4th, in which time 2,236 tons of ice were put on board. The crew were engaged in Boston, and did not arrive at Wiscasset until Saturday, the 7th, on which day the vessel sailed. The captain, first mate and cook were on board during the loading. Several letters were written by the plaintiffs, claiming demurrage, and by the defendants, denying the claim.

The defendants testified that they had more than 100 men sent from Boston to load their ships at Wiscasset, and that the Eclipse was loaded with great dispatch; that there was but one berth at which a vessel could load.

*E. H. Kimball*, for plaintiffs.

*H. W. Paine* and *R. D. Smith*, for defendants.

LOWELL, J. This case was submitted to me without a jury.