

a court sitting so near the coast as this does, whereon was wrecked within a short time past the *Huron*, the *Harkaway*, the *Elizabeth*; whereon was lost, on the very day when the salvage service under consideration was completed, a great ship and 25 lives, some of them the lives of heroes engaged in the very act of attempting the hazardous services of voluntary salvors. Salvors are more than common laborers, and their reward is of a character essentially different from wages.

Coming, now, to consider what ought to be the award in the case at bar, I do not find, in its facts and circumstances, much warrant for a high bounty. This court must encourage the sending of prompt and efficient aid to vessels reported to be in distress on the tempestuous and treacherous coast trending each way from the elbows of Hatteras. A niggardly treatment of salvors who promptly go out upon that coast in stormy weather and seasons on such errands would depress the enterprise which prompts such expeditions, and result, not only in large losses of property susceptible of rescue, but in much human exposure and suffering capable of alleviation, and loss of human life that might often be saved. I dare not treat such a subject in such a spirit, and apply a scale of wages to salvage services. I think the compensation of these libelants for mere towage ought to be at least \$500. I doubt if any tug would have ventured out on the occasion for that amount. I think the reward should be \$1,000. I will sign a decree for \$1,500.

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THE SURREY.

DIXON and others v. THE SURREY and others.

(*District Court, S. D. New York. February 14, 1887.*)

1. CARRIERS—OF GOODS—CARGO INJURED—DAMAGES.

The rule of damages as regards goods delivered at their destination, but injured through negligence, is the difference of their market price in their sound and in their damaged condition. If destroyed, it is their market value, if sound, at the place of discharge.

2. SAME—FOREIGN MARKETS.

No changes in foreign value can be regarded.

3. SAME—DUTIES PAID BY CARRIERS.

No deduction for unpaid custom-house duties should be allowed to the carrier.

In Admiralty.

*Hyland & Zabriskie*, for libelants.

*E. B. Convers*, for claimant.

BROWN, J. It is very difficult, under the peculiar circumstances attending the sale of lemons in winter, to determine what should be allowed for the lemons destroyed by frost in this case. The cases, pur-

chased by Smith at \$1.75, were bought under the expectation that they were an average class of fruit, or, as he afterwards explained, second class; whereas he found them to be third class, and injured. The price that he paid was not for first-class lemons. As the lemons had been open to inspection, it is not unreasonable to suppose that they failed to bring more than \$1.75, because they were very poor; that is, a third-class lemon. I have carefully read over all the testimony, and I think the price for lemons in cases, which are proved to be worth about 50 per cent. more than for lemons in boxes, should be increased to \$2.25 per case.

The duties should not be deducted, because no judgment in this court would relieve the defendant from his obligation to pay the duties, nor charge this obligation upon the libelants.

The ship, having completed the transportation contracted for by her, is responsible, on account of her negligence, for only the market value of the lemons at the port of discharge. That rule furnishes complete indemnity, because the payment of that sum enables the owner presumptively to procure similar goods at the time and place of discharge. That rule, therefore, secures *restitutio in integrum*. One hundred dollars will therefore be added to the principal allowed by the commissioner making in all \$340.75, with interest from January 26, 1885.

In other respects the report is confirmed.

## BEAN v. CLARK and others.

*(Circuit Court, N. D. New York. March 12, 1887.)*

## 1. PLEADING—ISSUE UPON INSUFFICIENT PLEADING.

Having taken issue upon the plea, the complainant cannot afterwards assert that the facts alleged are not a good defense to the bill.

## 2. CONTRACT—PRIVITY—WHO BOUND.

Complainant was bound by a contract, although he did not sign the written memorandum, and was not mentioned as a party in it, by which suits then pending between himself and defendant over the infringements of patents were to be dismissed, and defendants were to be licensed to use the patented inventions; it appearing that, though complainant did not himself sign the instrument, he participated in the negotiation which led to its being signed, was present at the signing, knew its terms, and intended to allow the parties who did sign to adjust the whole matter, as they were principally interested in effecting a settlement.

## 3. SAME—COMPLETED CONTRACT.

A written contract, although inartificially drawn, obscure, and capable of different interpretations in several particulars, yet its provisions embracing, although in very inadequate terms, every matter which the parties had definitely agreed to, and the circumstances surrounding its execution being consistent with no other conclusion, must be regarded as a completed agreement or contract, and not merely as an agreement to agree.

## In Equity.

*Hamilton Ward and Parkinson & Parkinson, for defendants.*

*J. R. Swan and Wood & Boyd, for complainant.*

WALLACE, J. The plea of the defendants goes to the whole bill. The complainant has taken issue upon the plea, and the case is now here upon the proofs. The only inquiry is whether the proofs establish the facts alleged in the bill. If they do, the defendants are entitled to judgment upon the plea, even though, had the plea been set down for argument, the facts averred would not authorize a judgment. Having taken issue upon the plea, the complainant cannot now assert that the facts alleged are not a good defense to the bill. Story, Eq. Pl. 697; *Rhode Island v. Massachusetts*, 14 Pet. 210; *Myers v. Dorr*, 13 Blatchf. 22; *Bogardus v. Trinity Church*, 4 Paige, 178; *Birdseye v. Heilner*, 26 Fed. Rep. 147. Equity rule 33, promulgated by the supreme court in 1842, declares that if upon an issue the facts stated in the plea be determined for the defendant they shall "avail him as far as in law and in equity they ought to avail him." It may be that this rule was intended to relieve a complainant from the hardship of having his suit barred when the facts stated are determined in favor of defendant, although they would not be a defense. But the language is consistent with the meaning that if the plea extends to part only of the matters of the bill the suit is to be barred so far as the plea extends; and if this is the correct interpretation, the rule does not change the pre-existing practice. The effect of rule 33 has not been considered by the supreme court in any reported case; and until that court passes upon the question, this court should adhere to the decisions in *Myers v. Dorr* and *Birdseye v. Heilner*.