

MISSOURI PAC. RY. CO. v. TEXAS & P. RY. CO.¹*In re* DAVIS.*(Circuit Court, E. D. Louisiana. May 28, 1887.)*

CONTRACT—COMPLETION OF—CARRIERS.

A shipper's order calling for a specific number of cars for a specified day will not, unaccepted by the carriers, constitute a contract binding on either.

On report of Master on Petition of I. T. Davis, Claiming Damages.
Sexton & Smith and *I. H. Kennard, Jr.*, for petitioner.
W. W. Howe, for receivers.

PARDEE, J. This matter has been heard on exceptions to the master's report recommending a dismissal of the claim. The master's report fairly and fully sets forth the facts as shown by the evidence, and his legal conclusions on the facts are supported at every step by the authority of adjudged cases. As the case seems to me, the claimant has failed to establish the basis of his claim for damages, to-wit, a contract with the receivers to furnish him a specified number of cattle cars on a specified day. It may be taken as granted that the receiver's station agent had authority, from the general scope of his agency, to bind the receivers in a contract to furnish cars, but it does not appear that he made any contract to that effect. A shipper's order calling for a specific number of cars for a specified day will not, unaccepted by the carriers, constitute a contract binding on either. A contract of the kind referred to will bind the carrier to furnish the cars, and the shipper to furnish the goods to load the cars.

Under the evidence it is apparent that the claimant did not intend to bind himself to furnish any certain number of cattle for shipment. In fact, he did not know, at the time of the alleged first contract, how many cattle he would have to ship, or when he would be ready to ship them; and, when he sent his order for cars, he ordered 75, when he had cattle for only 43; and at the time of the second alleged contract he again makes application for 75 cars for himself and Beal, but fixes no particular day for shipment, and when he brings the cattle in has enough only for about 40 cars.

It is therefore ordered that the exceptions to the master's report be overruled; that the said report be in all respects confirmed; and that the said intervention be dismissed.

¹Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

MELLIN v. HORLICK.

(Circuit Court, E. D. Wisconsin. August 15, 1887.)

JUDGMENT—ACTION ON FOREIGN JUDGMENT.

An action of *assumpsit* or debt will lie on a foreign judgment or decree based upon a prior pecuniary obligation, and also to recover the costs awarded by such judgment or decree; and, though the foreign judgment is set out *in extenso* in the complaint, the action will not be held to be brought directly on such judgment as a record, if the complaint further alleges that, by reason of such judgment and the proceedings therefor, defendant became indebted to plaintiff in the sum sought to be recovered.

The plaintiff alleged in his complaint in this action that in the year 1884, being a subject of Great Britain, he filed a petition in the high court of justice, chancery division, in England, to annul a certain patent granted to one Herbert John Haddan; that the defendant, Horlick, appeared in the case by his solicitor; and that such proceedings were thereafter had, that an order or decree was duly made by the court, referring the matter to the taxing-master to tax the costs of the petitioner, and to set off against such costs the sum of £56 3s. 4d., theretofore deposited in court as security for costs, and the interest thereon, and to certify the balance. It was further alleged that the court, before which said proceeding was pending, further ordered and decreed that the defendant, Horlick, pay to the petitioner, Mellin, the balance of such costs; that thereafter the taxing-master was attended by the solicitors of the parties, and taxed the costs of the petitioner at the sum of £245 5s. 6d., deducted therefrom the sum of £56 3s. 4d., in court, as security for costs, and 5s. 10d., the interest thereon, and found the balance to be £188 16s. 4d.,—all of which the taxing-master thereafter duly certified to the court; that said order and decree, and said taxation and certification, were, according to the practice of the court, final, and thereafter remained in full force, unexcepted to, unreversed, and wholly unsatisfied. It was then alleged that, by reason of the premises, the defendant became indebted to the plaintiff in the sum of £188 16s. 4d., with interest thereon from March 16, 1886, at the rate of 4 per cent.,—that being the rate prescribed by the laws of England; and judgment was demanded accordingly. To this complaint the defendant demurred, on the ground that it did not state facts sufficient to constitute a cause of action.

Dodge & Fish, in support of the demurrer, contended that this was a suit on a foreign judgment; that such a judgment has no standing in this country as a record; that a decree or judgment of a foreign court is not regarded as a record outside of the jurisdiction in which it was pronounced; and, therefore, that no action can be maintained on such a judgment or decree. They further argued that, if any action could be sustained in respect of such a judgment, it must be brought upon the original consideration; and if, in point of fact, there was no antecedent consideration; and the claim made was merely for an incident of the judgment, *e. g.*, costs, no action at all could be maintained in respect of it