

there was, at least, concurrent error on the part of the inspector; and, as I have said, the inspector's act was the same as that of the respondents themselves. In effect, the master and the respondents were acting concurrently in directing what iron belonged to the respondents. If there was any mistake by the master, it is certain that the inspector concurred in it, and communicated it. In legal effect, therefore, the respondents acquiesce in what was done through the concurrent acts of the inspector. Upon a mistake made in that way, and by the joint acts of both, if any mistake was indeed made by the master, I think the ship had the right to rely on the respondents' acquiescence at the time, for such is the legal effect; and to require the respondents to correct the error by pursuing the goods themselves which they had concurred in misdirecting, rather than make a claim against the master or ship. In truth, however, there is no proof of mistake by the master personally; the inference from the testimony is to the contrary. As I have said, the proof does not go back of the inspector; and as no failure of duty on the master's part is proved, so far as shown to me, the libelants are entitled to a decree for the freight, with interest and costs, without rebate for the alleged shortage or non-delivery.

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ABBOTT *et al.* v. NATIONAL S. S. Co.<sup>1</sup>

(District Court, S. D. New York. January 31, 1888.)

1. SHIPPING—SHORTAGE—BILL OF LADING.

Where a bill of lading declares, in effect, that the ship or the owners are not to be held responsible for numbers or weight, they cannot be held liable for shortage, without further proof than the statements of the bill of lading as to the actual amount delivered by the shipper. This rule applies both to actions *in rem* and *in personam*.

2. SAME.

The evidence showing satisfactorily that respondent's steam-ship had delivered all the bars of iron which had been loaded upon her, and on which a shortage was claimed by reason of the statement in the bill of lading of the number shipped, *held*, that respondent was not liable.

3. SAME—BILL OF LADING—CONSTRUCTION OF TERMS.

The term "131 bars short shipped," used in a bill of lading, construed to mean so many less than the number previously stated.

In Admiralty.

*Hamilton R. Squier*, for libelants.

*John Chetwood*, for respondent.

BROWN, J. The libelant sues to recover an alleged shortage of 64 bars of iron in a consignment brought from London to New York on board the respondent's steamer Denmark, in September, 1881. The bill of lading provides for a delivery of iron in the following form: "4,264 bars

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

of iron, 131 bars short shipped." The bill of lading, among other exceptions from liability, includes the following: "Not accountable for weight, contents, value, length, measure, quantities, or condition." The bill of lading in the margin stated the weight to be 74 tons, 17 cwt., 1 qr. Upon delivery at New York the number of bars was found to be 61 less than 4,264, but the weight was 74 tons, 18 cwt., 1 qr., 4 lbs., or 116 pounds in excess of that stated in the bill of lading.

The only evidence in regard to the meaning of the words "131 bars short shipped" that was given upon the trial is to the effect that this was a deduction to be made from the number 4,264 previously stated. Upon this explanation of the bill of lading, there would be an excess in the number of bars delivered over the number received of 70 bars. The evidence leaves no doubt that all the iron that was put on board the steamer was delivered in New York. It is not certain, however, that all that was delivered to the respondents in London was loaded upon the steamer, or was forwarded. But the libellant has given no proof of the actual number of bars, or of the weight, delivered to the respondents in London, except the bill of lading itself; and when the bill of lading, whatever the precise language, declares, in effect, that the ship or the owners are not to be responsible for the number or weight stated, neither the ship nor the owners can be held for alleged shortage without satisfactory proof of the actual amount delivered. Such exceptions rebut the presumption of the correctness of the number or weight stated in the bill of lading. The number and weight are often taken from the mere statement of the shippers, without verification by the ship. Such exceptions are notice of that fact, and that there is no responsibility for the amounts stated, except upon the further proof of what was delivered. This has been frequently applied in actions *in rem*, and is manifestly applicable equally to actions *in personam*. *The Ismaele*, 14 Fed. Rep. 491, 22 Fed. Rep. 559; *Matthiessen v. Gusi*, 29 Fed. Rep. 794; *The Tangier*, 32 Fed. Rep. 230; *Eaton v. Neumark*, *ante*, 891.

In the present case it would seem, from the weight stated in the margin of the bill of lading, that the full amount intended to be acknowledged by the bill of lading was delivered; since the full weight there stated was delivered, and somewhat more, as is proved by the custom-house weight. The libel must, therefore, be dismissed, with costs.

WOODRUM v. CLAY *et al.*

(Circuit Court, D. Kansas. February 21, 1888.)

**1. ANIMALS—INFECTIOUS DISEASES—TEXAS-FEVER ACT—PARTIES.**

In an action under Comp. Laws Kan. 1885, c. 105, § 80, for damages for illegally driving cattle into the state which communicated the Texas fever to plaintiff's cattle, and, to make such damages a lien on the cattle, the purchasers of the cattle who have assumed the liability for damages are properly joined as defendants, and a personal judgment may be had against them as well as against the vendor.

**2. REMOVAL OF CAUSES—CITIZENSHIP—ADVERSE INTEREST.**

In an action under Comp. Laws Kan. 1885, c. 105, § 80, for damages for illegally driving cattle into the state which communicated the Texas fever to plaintiff's cattle, brought against the importer and the purchasers, who had assumed the liability, the importer's interest is not adverse to that of the purchasers, so as to justify his classification as a plaintiff, and thereby give defendants a right of removal, on the ground of citizenship, to the federal courts.

**3. SAME—SEPARATE CONTROVERSY—ALIENS.**

Under the removal acts of 1875 and 1887, the right to remove a separate controversy is confined to citizens of different states, and these acts repeal the act of July 27, 1866, and Rev. St. U. S. § 639, cl. 2, giving this right to aliens.

**4. SAME—SEPARATE CONTROVERSY—PARTNERSHIP.**

An action on a partnership obligation is not separable, so as to entitle one partner to remove it on the ground of citizenship.

On Motion to Remand to the State Court.

*Rossington, Smith & Dallas* and *J. W. Rector*, for plaintiff.

*A. S. Wilson* and *Guthrie & Guthrie*, for defendants *Clay, Robinson & Co.*

FOSTER, J. The plaintiff, J. G. Woodrum, brought his suit in the district court of Washington county, Kansas, against *Clay, Robinson & Co.*, a firm composed of *John Clay, Jr.*, *William H. Forrest*, both aliens and subjects of Great Britain, and *Charles Robinson*, a citizen of Illinois, and *George S. Elwood* and the *Washington National Bank*, both citizens of the state of Kansas. *Clay, Robinson & Co.* removed the case to this court, and the plaintiff moves to remand it to the state court.

The exact ground upon which the right of removal is claimed does not appear in the petition. However, it is not placed upon the ground of local prejudice, nor that there is a separable controversy in the case; but the citizenship of the different parties is set out, and the amount in controversy stated, and a general application made to remove to this court. The defendant bank claims some interest in the recovery against defendants, and its interest is really on the side of the plaintiff. The cause of action alleged against *Clay, Robinson & Co.* is on a written agreement, given by them to their co-defendant *Elwood*, whereby they purchased a lot of cattle of said *Elwood*, and, as part consideration thereof, assuming and agreeing to pay all damages which the plaintiff, *Woodrum*, has sustained by reason of said cattle having communicated the Texas or Spanish fever to the cattle of said plaintiff. It is further charged that defendant *Elwood* drove the cattle from the territory south of Kansas into this