

kind is expressed in the contract, but that is the expectation upon which all contracts of insurance are entered into; and whenever that expectation fails,—fails for a series of years, and so far fails that the premiums received do not pay the expenses of carrying on a corporate existence,—then it would be gross inequity to compel the insured to continue his payments with the constantly vanishing expectation of receiving anything at the maturity of his policy. For 10 years this insurance company has been moribund. It is not yet quite a corpse, but its steady and sure progress is towards dissolution and death; and there must come a time—and it seems to me it has in this case—when it would be unjust to compel these complainants to remain bound to this dying corporation. It is not necessary to impute misconduct or fraud to the officers of this corporation; indeed, while this is charged in the bill, I think the testimony fails to show anything of the kind. The truth is, that, finding the insurance business unprofitable, in good faith the company has proceeded to wind up its business, seeking, as was of course legitimate, to save to the stockholders their investment; so that I deem it unnecessary to enter into any consideration of the facts presented as to the alleged misappropriation of funds or other misconduct by the officers. I think they have acted honestly, and according to their best judgment; but notwithstanding this I cannot avoid the conviction that the complainants are entitled to a release for the reasons I have above indicated. As my conclusions are in favor of the equities of the complainants, it follows that their failures to pay premiums since the filing of this bill have worked no forfeiture. I might criticise in some respects the action of the company in respect to attempted payments, but as that is a minor matter, not affecting the substantial rights of the parties, I shall waste no time upon it. I think the complainants are entitled to a decree declaring the contracts at an end, and giving to them an allowance against the company for the amount of the surrender value of their policies. If the parties can agree upon this amount, it will be inserted in the decree; if not, I will refer the matter to some actuary, to state the amount of such surrender value.

RICHARDSON *et al.* v. THE CHARLES P. CHOUTEAU.

(Circuit Court, E. D. Louisiana. January 29, 1889.)

CARRIERS—OF GOODS—CONNECTING CARRIERS—LIABILITY FOR LOSS.

Each of several connecting carriers is liable to the owner on a through bill of lading issued by the first, for damages to goods shipped, with recourse against the one in fault.

In Admiralty. Appeal from the district court.
 Libel by Richardson & May for injuries to certain cotton. Decree for libelants. Claimants appeal.
 O. B. Sansum, for appellants.

Bayne & Denegre, for appellees.

PARDEE, J. A libel is brought by consignees to recover damages on certain consignments of cotton delivered in New Orleans by the steamer Chouteau. It appears that shipments of various lots of cotton from points in the state of Arkansas were made on through bills of lading by the steam-boats *Ida Darragh* and *E. W. Cole*; that the cotton was carried to Terrent, Miss., and there reshipped on the *Chouteau*, which delivered the cotton at New Orleans. The *Darragh* and *Cole* gave clean bills of lading as to the condition of the cotton, and made through freight. The *Chouteau* took the cotton at Terrent, without executing independent bills of lading. The evidence shows that the cotton when received by the *Chouteau* was in about the same damaged condition as it was when delivered in New Orleans. The case seems to be on all fours with the case of *Harp v. The Grand Era*, decided in this court in 1871, by the late Justice Woods, and reported in 1 Woods, 184, where it was held: "When several carriers unite to complete a line of transportation, and receive goods for one freight, they are each liable for damages, subject to reclamation against the party by whose act the damage occurred;" and it was well said by the learned justice that, "any other rule which subjects shippers and consignees to such great inconvenience and uncertainty is to amount to a denial of a remedy. It sometimes occurs that in the course of the transportation freight passes into the custody of four or five different steamers or railroads, all forming one line, and giving through bills of lading. To require the owner to ascertain to which one the damage is attributable before he brings his action, is putting a burden upon him which makes relief almost impossible. Each carrier is the agent of all the others to accomplish and complete the carriage and delivery of the goods, when a through bill of lading is given, and freight charged." The evidence, however, in this case is not sufficiently definite and certain as to the amount of damage, and the case should go to a commissioner to report, unless the respondents are satisfied that the amount claimed is the proper amount.

FRANKFORT WHISKY PROCESS CO. v. MILL CREEK DISTILLING CO. *et al.*

(*Circuit Court, S. D. New York.* February 6, 1889.)

1. PATENTS FOR INVENTIONS—NOVELTY—PROCESS FOR MAKING WHISKY.

Letters patent No. 263,087, August 22, 1882, to M. J. Allen and W. E. Bradley, are for a process of making whisky, consisting in the utilization of the small particles of sugar, starch, and yeast contained in the slop, in the subsequent operations of whisky-making, by straining the slop of chaff and other large particles, and cooling it quickly to prevent the accumulation of acid. The slop in a sweet condition, with the small particles in suspension, is added to the liquid in the mash tub at the end of the mashing. *Held*, that though the utilization of the slop from which the fine particles were lost, and the use of straining and cooling apparatus were old, yet, the utilization of the small particles being new, the patented process is a novel one.