

Robinson Vs. Noble's Administrators

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SooperKanoon Citation : sooperkanoon.com/79437

Court : US Supreme Court

Decided On : 1834

Appeal No. : 33 U.S. 181

Appellant : Robinson

Respondent : Noble's Administrators

Judgement :

Robinson v. Noble's Administrators - 33 U.S. 181 (1834)

U.S. Supreme Court Robinson v. Noble's Administrators, 33 U.S. 8 Pet. 181 181 (1834)

Robinson v. Noble's Administrators

33 U.S. (8 Pet.) 181

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

N. stipulated in certain articles of agreement to transport and deliver by the steamboat *Paragon* to R. a certain quantity of subsistence stores, supposed to

amount to 3,700 barrels for the use of the United States, in consideration whereof R. agreed to pay to N., on the delivery of the stores at St. Louis at a certain rate per barrel, one-half in specie funds or their equivalent, and the other half to be paid in Cincinnati in the paper of banks current there at the period of the delivery of the stores at St. Louis. Under the agreement was the following memorandum. "It is understood that the payment to be made in Cincinnati is to be in the paper of the Miami Exporting Company or its equivalent."

The court erred in refusing to instruct the jury that the plaintiffs could only recover the stipulated price for the freight actually transported, and that they were entitled to no more than the specie value of the notes of the Miami Exporting Company Bank, at the time the payment should have been made at Cincinnati. The specie value of the notes at the time they should have been paid is the rule by which such damages are to be estimated.

The plaintiff, the owner of the steamboat, was not entitled under the contract to recover in damages more than the stipulated price for the freight actually transported. If R. had bound himself to deliver a certain number of barrels, and had failed to do so, N. would have been entitled to damages for such failure, but a fair construction of the contract imposed no such obligation on R.

There is no pretense that R. did not deliver the whole amount of freight in his possession, at the places designated in the contract. In this respect as well as in every other in regard to the contract, he seems to have acted in good faith. And he was unable to deliver the number of barrels supposed, either through the loss stated or an erroneous estimate of the quantity. But to exonerate R. from damages on this ground it is enough to know that he did not bind himself to deliver any specific amount of freight. The probable amount is stated or supposed in the agreement, but there is no undertaking as to the quantity.

In the District Court for the Western District of Pennsylvania, the administrators of William Noble, the defendants in error, instituted an action of covenant against the plaintiff in error upon certain articles of agreement in the following terms.

"Article of agreement entered into this 24 February between William Noble, of the City of Cincinnati, of the

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one part, and William Robinson Jr., of the City of Pittsburgh, of the other part, witnesseth that the said Noble hereby agrees, stipulates, and binds himself to and with the said Robinson to transport and deliver to said Robinson in the steamboat *Paragon* a certain quantity of subsistence stores for the use of the United States Army, supposed to amount to 3,700, estimating one-half of the quantity of stores as flour barrels and the other half as whiskey or pork barrels; the said Robinson delivering the one-half of the same between the 1 and 10 March to said Noble, at Cincinnati, and the other half by 30 March, at the usual place of deposit, near the mouth of the Ohio, the delivery of which stores is to be made and completed in the order in which they are received at the Town of St. Louis aforesaid, on or before 15 April next ensuing. In consideration whereof, the said Robinson hereby agrees and binds himself to pay to the said Noble, \$1.50 per barrel, one-half whereof is to be paid on the delivery of said stores at St. Louis, in specie funds or their equivalent and the other half in Cincinnati in the paper of banks current therein at the period of the delivery of the said stores at St. Louis."

The declaration averred that in the month of March, 1821, he, the said Noble, received on board the steamboat *Paragon* all the stores and lading which were offered by Robinson both at the City of Cincinnati and the usual place of deposit near the mouth of the Ohio River, and conveyed all the stores delivered on board the said boat, according to the stipulations in the articles of agreement, to the Town of St. Louis, and delivered those to Robinson in person, and also avowed performance of all the agreements, covenants, and stipulations in the articles of agreement. The declaration then proceeds to assign as breaches of the articles of agreement, that Robinson did not deliver one-half of the said amount of thirty-seven hundred barrels of army subsistence stores, or any other equivalent freight, to Noble, or on board the aid steamboat *Paragon*, at Cincinnati, between 1 and 10 March in the year 1821, although Noble and the boat were, during that time, ready and waiting to receive the same, and Robinson did not, on or before 30

March in the year last aforesaid, nor afterwards deliver to Noble, at the usual place of deposit,

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near the mouth of the Ohio River, the other half of the said 3,700 barrels of army subsistence stores, or on board of said boat at said last mentioned place, although the boat was there ready and waiting to receive the same, after the said 30 March in the year last aforesaid, and although Noble has frequently, before and after that

brk:

time, requested the said Robinson to furnish the stores and freight stipulated for as aforesaid, and further that Robinson hath not paid to the said Noble, nor to his use, the said sum of one dollar and fifty cents per barrel on the delivery of such amount of said stores as were actually carried in said steamboat and delivered in all respects, in accordance with the tenor of the articles of agreement at St. Louis, in specie or otherwise; nor hath Robinson paid to Noble, in any money, by the barrel, according to the price stipulated as aforesaid or otherwise, for such amount of said army subsistence stores as Robinson was, by the tenor of said articles of agreement, bound to furnish for freights to St. Louis, as above recited, but, on the contrary, hath wholly refused to pay the amount stipulated by him to be paid as aforesaid, in the manner or at the times above mentioned, or at any other times, or in any other manner. And Robinson hath further neglected and omitted to perform, in manner by him agreed as above mentioned, the stipulations and covenants made as aforesaid, but the same hath broken and not kept, contrary to the tenor and spirit of said articles of agreement, whereby the said Noble not only was deprived of the amount agreed to be paid by Robinson in manner aforesaid, but also of other great gains and profit which might and would otherwise have arisen and accrued to him during the time of detention of steamboat, caused by the nonperformance by Robinson of his agreements aforesaid.

On the trial of the cause, the counsel for the defendant prayed the court to charge the jury:

"1. That it is an inflexible rule in the construction of contracts, so to interpret them as to effectuate the intention of the parties. That it is within the province of the jury to determine what the intention was at the time of the execution of the instrument, according to the rules of construction the court may advise."

"2. That the contract upon which the present action is

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instituted is not a contract of affreightment by charter party. There is no hiring of the ship. It is a contract for the conveyance of merchandise in a general ship. That the plaintiff cannot recover damages according to the number of tons the ship was capable of containing, but that his damages must be limited, according to the terms of the contract, to the actual freight earned upon the cargo delivered."

"3. That the words, the spirit, and meaning of the contract preclude the plaintiff from recovering from the defendant more than the actual value of the Miami Exporting Company paper at the time it became due, according to the scale of depreciation."

"4. That under this contract there was no legal obligation upon defendant to tender to plaintiff the amount due him in the depreciated currency of the Miami Exporting Company in order to save himself from the payment of the numerical value of the notes, inasmuch as the defendant reserved to himself the right either to pay in the depreciated currency or in its equivalent."

"5. That the plaintiff cannot recover, in the present action at law, the freight for goods actually transported, and damages for the breach of the contract for nondelivery of all the stores defendant contracted to deliver for transportation."

The court charged the jury upon these points:

"1. It is certainly true that the intention of the parties to a contract must govern its construction, provided that no violence is done to the rules of law in seeking to effectuate such intention, and it is the province of the jury to judge, from the language of the contract, what that intention is, subject to the opinion of the court

as to its legal effect."

"2. The contract which is the subject of the present suit is not a contract of affreightment by charter party, and, in strictness, the plaintiff cannot recover damages according to the number of tons the boat was capable of containing. The rule of law, in cases where there has been a failure to furnish the stipulated freight, and there exists no charter party, is for the jury to take all circumstances into consideration, and to make an allowance for any freight which the master had it in his power to transport in addition to that which was furnished. If the lading should not be complete without the default of the

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master, the rule is to estimate the freight by means of an average, so as to take neither the greatest possible freight, nor the least, and such average is the proper measure of damages."

"3d and 4th. The actual specie value of the paper of the Miami Exporting Company, at the time it became due by the contract, is not the true measure of damages. It was made, and to be executed in the State of Ohio, and the laws of that state must therefore govern this case. The defendant having failed to tender to the plaintiff the paper of the Miami Exporting Company, or its equivalent, at the time mentioned in the contract, and the plaintiff having performed all he had covenanted to perform, is, by the laws of Ohio, entitled to recover the numerical value of the paper of the Miami Exporting Company, in specie, with interest."

In answer to the last point, the court said that the plaintiffs claim not only for the freight actually transported and delivered, but damages for failing to furnish as much freight as the article stipulates for; if the testimony supports their claim, they may, in the present action, recover damages for such failure.

Whereupon the counsel for the defendant excepted to the opinion of the court upon the several points aforesaid, and requested the court to seal a bill of exceptions, which was accordingly done.

The jury rendered their verdict, finding in favor of the plaintiff the sum of \$3,391.14, upon which verdict the court entered judgment, and the defendant prosecuted this writ of error.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

This case was brought into this Court, by a writ of error to the District Court, which exercises the powers of a circuit court, for the Western District of Pennsylvania.

The plaintiffs in the district court commenced an action of covenant on the following instrument.

"Article of agreement entered into this 24 February between William Noble of the City of Cincinnati of the one part, and William Robinson, Jr., of the City of Pittsburgh of the other part, witnesseth; that the said Noble hereby agrees, stipulates and binds himself, to and with the said Robinson to transport and deliver to said Robinson in the steamboat *Paragon*, a certain quantity of subsistence stores for the use of the United States Army, supposed to amount to about 3,700 hundred barrels, estimating one-half of the quantity of stores as flour barrels, and the other half as whiskey or pork barrels, the said Robinson delivering one-half of the same between the 1 and 10 March to said Noble at Cincinnati, and the other half by 30 March at the usual place of deposit near the mouth of the Ohio, the delivery of which stores is to be made and completed in the order in which they are received at the Town of St. Louis aforesaid, on or before 15 April next ensuing. In consideration whereof, the said Robinson hereby agrees and binds himself to pay to

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the said Noble, \$1.50 per barrel, one-half whereof is to be paid on the delivery of said stores at St. Louis in specie funds or their equivalent and the other half in Cincinnati, in the paper of banks current therein, at the period of the delivery of said stores at St. Louis. In testimony whereof, the parties signed and sealed the

instrument 24 of February, 1821."

Under the agreement was the following memorandum. "It is understood that the payment to be made in Cincinnati is to be in the paper of the Miami Exporting Company or its equivalent." Signed, William Robinson, Jr.

This covenant being before the jury, the defendant's counsel prayed the court to instruct them that the plaintiffs could only recover the stipulated price for the freight actually transported, and that they were entitled to no more than the specie value of the notes of the Miami Exporting Company Bank, at the time the payment should have been made at Cincinnati. But the court refused so to instruct the jury, and directed them that they were authorized to take all the circumstances into consideration, and to make an allowance for any freight which the master had it in his power to transport, in addition to that which was furnished. That if the lading should not be complete, without the default of the master, the rule is to estimate the freight by means of an average, so as to take neither the greatest possible freight, nor the least, and that such average is the proper measure of damages.

And the judge further instructed the jury that

"The defendant having failed to tender to the plaintiff the paper of the Miami Exporting Company or its equivalent at the time mentioned in the contract, and the plaintiff having performed all he covenanted to perform, is by the laws of Ohio entitled to recover the numerical value of the paper of the Miami Exporting Company in specie, with interest."

And the jury, under these instructions found for the plaintiff \$2,377.36 in damages.

On this statement of the case the question arises whether the court erred in refusing to give the instructions prayed for by the defendant. And first, whether the plaintiffs were entitled

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to recover in damages more than the stipulated price for the freight actually transported.

By the article, Noble agreed with Robinson to transport "in the steamboat *Paragon* a certain quantity of subsistence stores, &c.;, supposed to amount to about 3,700 barrels," &c.;, "in consideration whereof Robinson binds himself to pay \$1.50 per barrel." Under this agreement, only 3,105 barrels were delivered for transportation.

The plaintiff's counsel insist that Robinson was bound by his agreement to deliver the number of barrels specified, subject only to a reasonable qualification of the words "supposed to amount to 3,700 barrels," and that by this rule, the number could not be reduced below 3,600 barrels.

It is clear from the agreement that the amount of freight was not ascertained and that Robinson did not covenant to deliver any specific number of barrels. It was conjectured there were 3,700, and the payment for the transportation was to be at the rate of \$1.50 per barrel.

The master of the steamboat *Paragon* proved on the trial, that the second trip which the boat made under this contract, she had not more than two-thirds or three-fourths of a cargo. And it also appeared that the reason assigned why a greater number of barrels were not delivered to the master of the steamboat was that one or two flatboats, laden with flour, designed as a part of the second cargo of the *Paragon*, were sunk above Cincinnati.

If Robinson had bound himself to deliver a certain number of barrels, and had failed to do so, Noble would have been entitled to damages for such failure, but a fair construction of the contract imposed no such obligation on Robinson, and consequently the breach assigned in the declaration is not within the covenant.

It is unnecessary to determine whether, under a certain state of facts and with proper averments in the declaration, damages might not be recovered, beyond the price per barrel for the cargo transported, as such a case is not before the Court.

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There is no pretense that Robinson did not deliver the whole amount of freight in his possession at the places designated in the contract. In this respect, as well as

in every other, in regard to the contract, he seems to have acted in good faith. And he was unable to deliver the number of barrels supposed either through the loss stated or an erroneous estimate of the quantity. But to exonerate Robinson from damages on this ground, it is enough to know that he did not bind himself to deliver any specific amount of freight. The probable amount is stated or supposed in the agreement, but there is no undertaking as to the quantity.

When the circumstances under which this contract was made are considered, the contingencies on which the delivery of the freight in some degree depended, the reason is seen why cautious and indefinite language was used in regard to the number of barrels in the contract. And the result proved that this caution was judicious, as, if the contract had stipulated for a specific amount of freight, Robinson would have been bound to pay the full price of transportation, notwithstanding the loss he sustained.

The Court thinks that there was no breach of the covenant in this respect on the part of Robinson and that the district court erred in not giving the instruction as prayed for by the defendant.

The second instruction asked by the defendant's counsel in the court below was that the plaintiffs were not entitled to recover more than the specie value of the notes in which the payment was to have been made at Cincinnati.

It was proved on the trial that the notes of the Miami Exporting Company, in which, by the contract, the payment was to be made or other notes of equal value, were not worth more in specie than 66 2/3 percent

The express provisions of the contract show that the payment at Cincinnati was not to have been made in specie, or what was equivalent to specie. The notes of the Miami Exporting company were substituted by the parties as the standard of value which should discharge this part of the contract, and the payment of those notes, or any others of equal value, was all that Noble had a right to demand. But it is contended

that as the payment was not made at the day, it must needs be made in specie, and to the full amount of the sum agreed to be paid in depreciated paper.

In what does this covenant to pay differ from an agreement to deliver a certain quantity of flour or any other commodity on a given day?

The notes of the Miami Exporting Company purported to be money, and may, to some extent at the time, have circulated as such in business transactions, but it is manifest they were not considered as money by the parties to this contract, but as a commodity, the value of which was to be ascertained by the amount of specie it would bring in the market. And if it should not be convenient for Robinson to make the payment in these notes, he was permitted to make it, by the contract, in any other depreciated notes of equal value.

Robinson failed to make the payment at the time, and is he now bound to pay the nominal amount of these notes in specie? What damage has Noble sustained by the nonpayment? Certainly not more than the value of the notes if they had been paid.

Had these notes been equal to specie on the day of payment, Robinson was bound to pay them or what was of equal value. If they had depreciated to fifty cents in the dollar, Noble was bound to receive them in discharge of the covenant. Each party incurred a risk in the fluctuations of the value of the notes specified, and nothing could be more unjust or more opposed to the spirit and letter of the contract than to require Robinson to pay in specie the nominal value of these notes. The law affixes no such penalty for default of payment. Robinson can only be held liable to make good the damages sustained through his default; and the specie value of the notes, at the time they should have been paid, is the rule by which such damages are to be estimated.

In this view it appears that the district court erred in refusing to give the second instruction prayed for by the defendant's counsel; on this ground, therefore, as well as the one first noticed, the judgment of that court must be

Reversed and the cause remanded for further proceedings in conformity with this decision.

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This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Pennsylvania and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said district court in this cause be and the same is hereby reversed and that this cause be and the same is hereby remanded to the said district court, with directions that further proceedings be had therein, according to law and justice, and in conformity with the opinion of this Court.

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