

Coös, }
 May 6, 1913. }

JULIUS HAAKENSEN v. BURGESS SULPHITE FIBRE Co.

CASE, for personal injuries. Trial by jury and verdict for the plaintiff. Transferred from the September term, 1912, of the superior court by *Chamberlin, J.*, on the defendants' exception to the denial of a motion for the direction of a verdict in their favor.

Matthew J. Ryan and *Rich & Marble* (*Mr. Ryan* orally), for the plaintiff.

Drew, Shurtleff & Morris and *Sullivan & Daley* (*Mr. Morris* orally), for the defendants.

YOUNG, J. It was held when this case was here before (*Haakensen v. Company*, 76 N. H. 443) that there was evidence for the jury; and as there is now more evidence for the plaintiff, the defendants' motion for a directed verdict was properly denied.

Exception overruled.

All concurred.

Hillsborough, }
 Nov. 4, 1913. }

BOSTON & MAINE RAILROAD & a. v. DANIEL J. GALLAGHER & a.

BILL IN EQUITY, to enjoin the defendants from entering the station and grounds of the plaintiff railroad, in Manchester, to solicit the carriage of baggage for passengers. The defendants demurred. The essential facts are the same as in *Hedding v. Gallagher*, 72 N. H. 377. Transferred without ruling from the May term, 1911, of the superior court by *Plummer, J.*

Branch & Branch, for the plaintiffs.

James A. Broderick, for the defendants.

PEASLEE, J. A majority of the court being of the opinion that the decision in *Hedding v. Gallagher*, 72 N. H. 377, should stand, there is no occasion to further consider the questions discussed therein.

A defence now made for the first time is that a decree for the plaintiffs will deprive the defendants of the rights guaranteed to them under the fourteenth amendment to the constitution of the United States. No argument in support of this proposition has been furnished, and the authorities are decisive against it. *Slaughter-house Cases*, 16 Wall. 36.

Demurrer overruled.

All concurred.

Rockingham, }
Dec. 2, 1913. }

ISAAC HERSHBERG & *a.* *v.* CHARLES A. MORRISON.

ASSUMPSIT, for clothing manufactured by the plaintiffs for the defendant. Trial by jury and verdict for the defendant. Transferred from the April term, 1913, of the superior court by *Young, J.*

The defendant testified that he gave the order for the merchandise to the plaintiffs' traveling salesman, whom he had previously dealt with as the representative of another clothing house which had permitted him to return goods whenever he desired to do so. When the order was given the salesman said he was in a position to use the defendant better than before, and the latter then understood that he had the right to return the whole or any part of the goods. When the goods were delivered in accordance with the order, the defendant found himself overstocked and unable to pay, and at once returned them to the plaintiffs.

The plaintiffs excepted to the denial of a motion for the direction of a verdict in their favor and to the admission of evidence as to the defendant's former custom of returning goods.

Frink, Marvin & Batchelder, for the plaintiffs.

Eastman, Scammon & Gardner, for the defendant.

PARSONS, C. J. No question of law which requires consideration is presented. Whether the defendant reasonably understood the contract to give him the right of return was a question of fact. That fact being found for him, there was no contract to accept the goods upon delivery. Not having agreed to accept and keep the goods, the defendant is not liable for not doing so. Evidence of the