

Judgments. Equitable Relief. Enforcement of Judgment for Advance Payments on Contract of Sale Repudiated by Buyer

Source: *Harvard Law Review*, Vol. 24, No. 5 (Mar., 1911), p. 405

Published by: [The Harvard Law Review Association](#)

Stable URL: <http://www.jstor.org/stable/1324714>

Accessed: 19/05/2014 00:59

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



The Harvard Law Review Association is collaborating with JSTOR to digitize, preserve and extend access to *Harvard Law Review*.

<http://www.jstor.org>

telegraph company's negligent failure to deliver telegrams sent to a person in another state. *Held*, that the statute is constitutional. *Western Union Telegraph Co. v. Commercial Milling Co.*, 31 Sup. Ct. 59.

Against the validity of this exercise of the state's police power through a statute founded upon the policy of the state to hold telegraph companies to the high standard of care that is desirable in callings quasi-public in nature, it was chiefly urged that the statute interfered with interstate commerce. The court, however, held that no direct restraint ensued and sustained the enactment under the language of a previous case, finding that it may be "fully carried out . . . without in any manner affecting the conduct of the company with regard to the performance of its duties in other states." *Western Union Telegraph Co. v. James*, 162 U. S. 650, 660. For a discussion of the principles involved, see 22 HARV. L. REV. 437.

JUDGMENTS — EQUITABLE RELIEF — ENFORCEMENT OF JUDGMENT FOR ADVANCE PAYMENTS ON CONTRACT OF SALE REPUDIATED BY BUYER. — In a contract for the sale of hops, A was to deliver in October, 1906, and B was to make part payments in the preceding April, May, and September, and on delivery. In March, B repudiated the contract. In May, A brought an action for \$4000, comprising the first two payments, and final judgment was rendered in his favor in December, 1907. A did not tender delivery of the hops, which, in October, 1906, had a market value in excess of the contract price, but subsequently sold them at a loss. B now asks to have the enforcement of the judgment enjoined. The decree of the trial court refusing the injunction was affirmed by necessity, the court being evenly divided. *Livesley v. Krebs Hop Co.*, 112 Pac. 1 (Or.).

Since the market price at the time for delivery was higher than the contract price, if A had sued for a breach of the entire contract, he could have recovered only nominal damages (for the year 1906). *Tufts v. Bennett*, 163 Mass. 398; *Jones v. Jennings*, 168 Pa. St. 493. In the action for the advance payments, B might have urged that this was A's proper remedy, since B had repudiated the entire contract besides refusing to make the payments in question. *Acme Food Co. v. Older*, 64 W. Va. 255. See WILLISTON'S WALD'S POLLOCK, CONTRACTS, 362. But this point, not being taken, was waived. *Krebs Hop Co. v. Livesley*, 51 Or. 527. If B had made the advance payments, and A had wrongfully failed to deliver, B could have recovered what he paid. *Cherry Valley Iron Works v. Florence Iron River Co.*, 64 Fed. 569. See WILLISTON, SALES, § 600. Similarly if, after recovering judgment for advance payments, A had wrongfully failed to deliver, it is submitted that the enforcement of the judgment should have been enjoined. But the seller is excused from tendering delivery, if, when it is due, the buyer repudiates the contract or refuses to make overdue payments. *Cort v. Ambergate, etc. Ry. Co.*, 17 Q. B. 127. Since the litigation was in progress during October, 1906, A was excused from tendering delivery. The result of the principal case, therefore, seems sound in refusing to disturb the judgment.

LEGACIES AND DEVICES — CLASSES OF LEGACIES AND DEVICES — CONDITIONS IN RESTRAINT OF MARRIAGE: WHEN VOID. — A testatrix, having several daughters and one incompetent son, left the son's share to trustees for him for life, and after his death to her "unmarried daughters." Assuming that the beneficiaries were to be determined, not at the death of the testatrix, but at the death of the son, it was contended that the word "unmarried" ought to be stricken out as an illegal condition. *Held*, that the condition was not illegal. *Robinson v. Martin*, 200 N. Y. 159.

The Roman law held no donee bound by conditions tending to restrain his marriage. The ecclesiastical courts grafted this principle upon the law of