

**WHERE YOUNG LAWYERS
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**Forensic Battles of the Moot
Court and Their Results.**

The case last Wednesday night presented a question of unusual interest and was ably argued by counsel for both parties. Messrs. Fulton and Bellinger appeared for the plaintiff and Hamer and Galbraith for the defendant. The facts of the case are sufficiently set out in the opinion. The case was argued before Mr. Alan Johnston, C. J. and E. W. Mullins, A. J.

The facts involved in this case are not in dispute and are as follows: Wm. Smith & Co. bought a large quantity of cotton linters from Columbia Oil Mill Co. The oil mill at Smith & Co's request shipped same as cotton in order to get a lower freight rate. Smith & Co. took the bill of lading to plaintiff, who took the bill of lading as collateral security for a loan. The notes were not paid when due and the bank then finds out they have only linters instead of cotton, and sell with a loss of \$13,000. The bank then brings this action against the Oil Mill Co. to recover their loss.

This is an action of deceit and the principal question before this court is as to whether the plaintiff is entitled to recover the amount alleged to be due in the complaint.

The fact that the oil mill intentionally represented the linters to be cotton certainly amounts to a fraudulent misrepresentation of a subsisting fact.

But it was earnestly urged by the learned counsel for the defendant that there was no intent on the part of the defendant that the misrepresented facts should be acted upon by the plaintiff, as the defendant had no knowledge that the bill of lading was to be transferred to plaintiff. We think this contention is unsound upon both reason and authority. In the case of Munro vs. Gairdner, 3 Brev. 31, the court said: "An intention to deceive is material, but if the falsehood asserted or imposed is in its nature or character calculated directly to defraud and injure some one in particular, or all persons generally, an intention to deceive and injure anyone who may be thereby deceived and defrauded may be implied." While it is true that the foregoing language of the court was not necessary for the determination of the case and must be regarded as dicta yet we think it expresses the true rule and it

does not lack authority to support it. See Olafin vs. Com. Insurance Co. 110 U. S. 95 14 A. & E. Ency. of Law (2nd Ed.) 2122 and cases cited therein. Also Cent. Dig., title Fraud, see 9, 10, 24.

It is further insisted by the counsel for defendant that there is no privity between plaintiff and defendant. But we are concerned in this case with the law of fraud. It is not disputed that defendant made false representations as to the commodity described in the bill of lading. If this were an action for simple negligence or breach of warranty, the question of privity between the parties might possibly arise, but we think it can have no application to the case at bar.

The defendants also contend that a bill of lading is nothing more than a contract between the railway company and the shipper and is not negotiable, and therefore the defendant had no reason to anticipate the fact that the plaintiff or any one else might be defrauded. But the Supreme Court of South Carolina in Thomas vs. Railroad Co., 85 S. C. 537 lays down the law that while a bill of lading is not negotiable it is quasi-negotiable and that title thereto passes by transfer or delivering and that it is in the highest degree important to the large commerce universally known to be built upon the transfer of bills of lading, that there should be confidence in their recitals.

Benjamin vs. Sinclair, 1 Bail. 174, Bank of Batavia vs. R. R. Co. 60 Am. Ref. 452, Brooke vs. R. R. Co. 108 Pend, 526. We think that the defendant when he procured the false bill of lading was changeable with the knowledge that the same was to pass thru the Chamber of Commerce and would in all probability, fall in the hands of a third party. For the reasons herein stated the judgment is reversed and the case remanded.

S. C. Press Association Meets.

The South Carolina College Press Association met this week at Erskine. The University was represented by J. S. Dudley, editor-in-chief of the Carolinian, R. Schwartz, executive committee-man from the Carolinian staff, and E. R. Jeter, editor-in-chief of the Gamecock.

This delegation was instructed by the two literary societies to invite the college journalists to meet at the University next year. College newspapers are a potent factor in student life, and the University will be fortunate in getting the inspiration to be gained from having the Press Association meet here.

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