



3-1-2005

The Historical Setting for Hadley v. Baxendale

Hugh Conway-Jones

Follow this and additional works at: <https://scholarship.law.tamu.edu/txwes-lr>

Recommended Citation

Hugh Conway-Jones, *The Historical Setting for Hadley v. Baxendale*, 11 Tex. Wesleyan L. Rev. 243 (2005).
Available at: <https://doi.org/10.37419/TWLR.V11.I2.3>

This Symposium is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Texas Wesleyan Law Review by an authorized editor of Texas A&M Law Scholarship. For more information, please contact aretteen@law.tamu.edu.

THE HISTORICAL SETTING FOR *HADLEY v. BAXENDALE*

Hugh Conway-Jones†

Joseph and Jonah Hadley ran the City Flour Mills in the docks at Gloucester, England, and in 1853 they had an urgent need to send a broken shaft back to the manufacturer's works. Joseph Baxendale was the managing partner of the carriers Pickford & Co., who did not keep its promise to transport the shaft quickly. This piece describes the historical setting of the City Flour Mills and outlines the events featured in the subsequent legal case that became famous as *Hadley v. Baxendale*.¹

The docks at Gloucester developed at the terminus of a ship canal which bypassed a difficult stretch of the River Severn. The canal was completed in 1827 and allowed the largest sailing ships of the day to discharge their cargoes in a basin close to the centre of the city. From here, goods were transferred to smaller craft to continue up the River Severn and through the narrow canal system to supply the growing industrial towns further inland.

The main imports through Gloucester were timber and corn—the latter being a generic term which covered wheat, oats, barley, maize, *et cetera*. Timber came in the form of squared logs and sawn deals from the Baltic countries, the north of Russia and Canada. To store the wood, extensive yards were established around the terminus basin and down the east side of the canal approaching Gloucester. This trade was particularly stimulated by a boom in the construction of railways. Corn came from Ireland, western Europe and the Black Sea ports around the mouth of the Danube. To store the corn in sacks, five and six storey brick warehouses were built with wooden floors supported by cast-iron columns. This trade benefited from the repeal of the Corn Laws in 1846, which effectively ended the import duty on foreign corn. Unfortunately, the only convenient export cargo was salt brought down the river from the Droitwich area, and many vessels departed empty to pick up coal from one of the South Wales ports.

One of the pictures shows the bridge at the approach to the terminus basin with some warehouses and the tower of Gloucester cathe-

† Gloucester historian Hugh Conway-Jones is the author of *The Gloucester & Sharpness Canal: An Illustrated History* (Tempus Publishing 1999, and reprinted in 2003). He maintains a website on Gloucester Docks and the Sharpness Canal, available at www.gloucesterdocks.me.uk, which includes comparisons of old photographs with the same views today. "There is no one more qualified to write a history of this major 19th century canal which had such an influence on Gloucester." John Loosely, Gloucestershire Local History, Book Reviews, August, 2003, available at <http://home.freeuk.com/gloshistory/lhcbrev5.htm> (last visited on January 30, 2005) (on file with the Texas Wesleyan Law Review).

1. 156 Eng. Rep. 145 (Ex. 1854).

dral in the background. The bridge was in two halves, each of which was swung open to let a vessel pass. On the extreme right can be seen the bow of a ship that had been towed up the canal by the horse standing on the towpath. This view would have been much like that seen by the crew of the first ship direct from the United States which brought 9,500 barrels of wheat in December 1845.

Trade continued to increase, aided by railway links to the docks, and a second basin was opened in 1849. The good transport facilities attracted the development of local industries, one of the first being the construction of the City Flour Mills by Joseph and Jonah Hadley in 1850. Prior to this, corn imported through Gloucester was sent on to existing mills, but it made sense to build a mill where the corn was being delivered. The two brothers had experience of small water-powered mills, but with no water-power available in the docks area, they set up a steam-powered mill. Initially, the mill was a single building, similar to the nearby warehouses, with a small engine house adjoining supplying power to a few pairs of millstones and some flour dressing machines. The business was immediately successful, and in 1853 the Hadleys added another large building on the site of the engine house and installed more machinery and two new steam engines to double the output of the mill.

During the installation of the new machinery, the crank shaft of one of the steam engines failed, and there was an urgent need to send it back to the manufacturer, Messrs. Joyce & Co. of Greenwich.² Pickford's agent in Gloucester said that if it received the shaft before twelve o'clock, it would be delivered in Greenwich the following day.³ Unfortunately, due to a misunderstanding, the delivery of the shaft was delayed by five working days.⁴

When the Hadley brothers complained about the delay, Pickford's acknowledged responsibility and offered £25 in compensation, but the Hadleys demanded an amount closer to £125 for their loss of profits during the additional period their mill was idle.⁵ The case was heard in the Crown Court at Gloucester's summer assizes before a special jury composed of respected local businessmen.⁶ Pickford's barrister argued that the shaft was only worth about £10 and their offer of £25 damages was more than reasonable.⁷ The judge, however, ruled that the value of the object was irrelevant and that the defendants were answerable for the natural consequences of their breach of contract.⁸ With this guidance, the jury awarded damages of £50.⁹

2. *Id.* at 147.

3. *Id.*

4. *Id.*

5. *See id.* at 146-47.

6. *See id.* at 147.

7. *See id.* at 146-47.

8. *See id.* at 147.

9. *See id.*

Pickford's considered that this basis for awarding damages was unreasonable, and in February 1854, they asked the Court of Exchequer to order a new trial.¹⁰ After hearing legal arguments, the judge granted the request and set down the principles which any jury should consider when estimating damages.¹¹ He said that where a party had entered into and broken a contract, the other party should only receive damages for consequences that might reasonably have been contemplated by both parties at the time that the contract was made.¹² As the Hadley brothers had not made it clear that the profits from their mill were at stake, he considered that it was not reasonable for Pickford's to be expected to make good those profits.¹³

No record has been found of any subsequent retrial before a jury, and it is assumed that the two parties settled out of court. What is certain is that the judge's ruling established the foreseeability test for consequential damages that has been followed in virtually every Anglo-American jurisdiction since.¹⁴

By 1860, the Hadley brothers had transferred their activities to London, and operations at Gloucester were taken over by Joseph Reynolds and Henry Allen, who also had other mills in the area. Their continuing success set a fine example, and six other flour mills were established in Gloucester between 1863 and 1871. All this contributed to a very busy period in the history of the docks, with many vessels bringing in increasing amounts of wheat from all parts of the world.

Reynolds and Allen passed over management of the mill in 1875 to a new partnership formed by their sons, Vincent Reynolds and John Allen, together with Francis Tring Pearce who had married John Allen's sister. They were soon faced with the need for major new investment to meet the threat of growing competition from cheaper foreign flour. A totally new method of milling using rollers instead of the traditional stones had been developed in Hungary, and the partners were obliged to purchase the new equipment or risk getting left behind. Unfortunately, this investment was followed by a period of general economic difficulty, and the partners were forced to pass over the business to new management.

Friday Metford & Co. was formed in 1886 by Charles Friday, who had two other mills in the area, F.K.S. Metford from Bristol and F.T. Pearce from the former partnership. These three quickly got the busi-

10. *Id.*

11. *Id.*

12. *Id.* at 150-51.

13. *Id.* at 151.

14. See, e.g., GRANT GILLMORE, *THE DEATH OF CONTRACT* 83 (1974) (stating, "*Hadley v. Baxendale* is still, and presumably always will be, a fixed star in the jurisprudential firmament").

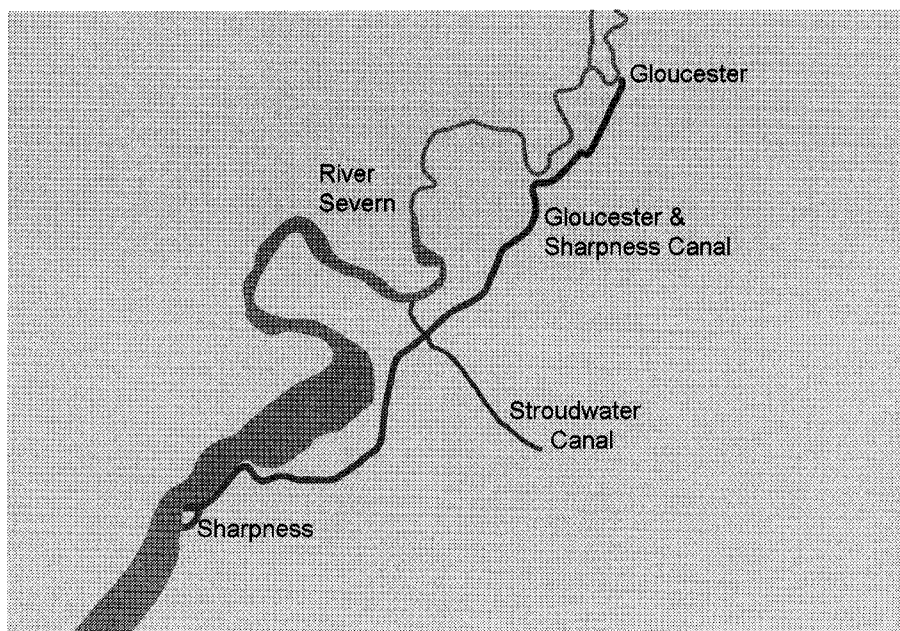
ness back into profitability, and it was members of these three families that continued to run the mill for the next hundred years.

The general increase in the size of ships in service meant that fewer were able to pass up the canal to Gloucester, and by the early years of the twentieth century, most of the wheat used by the mill arrived at Gloucester in barges towed from larger neighbouring ports. As the size of ships increased still further, Liverpool became the dominant west-coast port for wheat imports, and in the 1970s the delivery of wheat to the mill gradually changed over from the use of barges to lorries coming down the motorway. In later years, a greater proportion of English wheat was used, and considerable deliveries came direct from local farms.

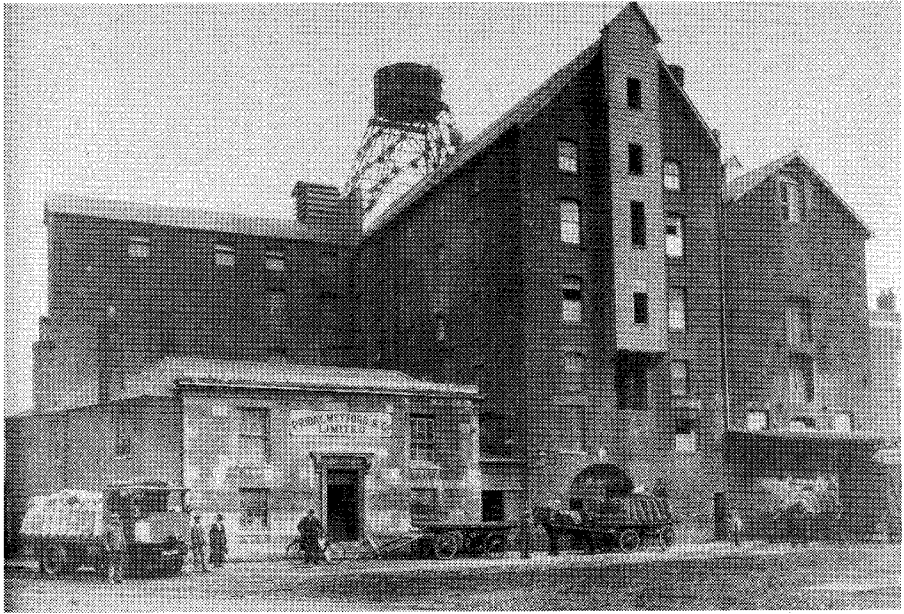
Continuing investment kept the mill machinery up-to-date, but the family business found it increasingly difficult to compete against the big national milling companies. Eventually, the mill was taken over by the Spillers Milling subsidiary of Dalgety plc, and the new management ordered the closure of the mill in March of 1994 because of surplus capacity. This regrettably broke the last link with the corn trade that was once so important in the docks and brought a sad end to the history of one of Gloucester's oldest companies.

By this time, the docks at Gloucester had ceased to be used for commercial traffic and were in the process of being redeveloped for leisure uses. The mill buildings stood empty for a few years, and then they were converted into apartments. This work was virtually complete by June 2004, when a conference was held to mark the 150th anniversary of the historic judgement that has given the City Flour Mills a lasting place in legal history.

MAP OF THE SHIP CANAL LEADING TO THE DOCKS AT GLOUCESTER

THE BRIDGE AT THE ENTRANCE TO THE TERMINUS BASIN
AT GLOUCESTER

THE CITY FLOUR MILLS, GLOUCESTER, IN THE 1920S



THE CITY FLOUR MILLS CONVERTED TO APARTMENTS

