

Eng. Rep.]

HUDSTON v. THE MIDLAND RAILWAY CO.—YOUNG v. AUSTIN.

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words personal luggage—that is, articles which a traveller carries with him, not being merchandise nor for profit, is personal luggage. In *Phelps v. The London & North-Western Railway*, 13 W. R. 782, 34 L. J. C. P. 259, where an attorney took with him certain document and bank notes (which were held not to be personal luggage) for use in certain causes in a county court, (Chief Justice Erle in his judgment says—“But still the habits of mankind must be considered to be within the cognizance of the railway company, so that anything carried according to usage for personal use would be a matter for which the company would be responsible as luggage of a traveller on a journey.” [LUSH, J.—No doubt personal luggage means more than what a passenger requires for his own personal use and convenience on a journey; the difficulty is to define what it does include.] A liberal construction, therefore, should be put upon the regulation, and will include different things at different times, according as the wants of travellers vary. For instance, if a family goes to a watering place the toys of the children may be taken as personal luggage. [HANNEN, J.—Should you say a four-post bed was personal luggage?] In *Cahill v. London and North-Western Railway Company*, 9 W. R. 653, 10 C. B. N. S. 154, the luggage consisted of merchandise; the same observation applies to *Belfast Railway Company v. Keys*, 9 W. R. 793, 9 Ho. of Lds. 556. He also cites, Angell on Carriers, 3rd ed. s. 115; Story on Bailments, 6th ed. s. 499.

A *Wills* (J. C. Carter with him), for the respondents.—The court must look at the nature of the thing carried. This is in the nature of furniture; if this may be carried as personal luggage why may not a table, or chair, or bed. [LUSH, J.—What do you say to a bath?] Perhaps it might; but take the case of a person daily travelling to town on business; in this way he might furnish his house. He also relied on the cases cited on the other side, and the note to Story on Bailments, 6th ed. s. 499. This is not an article that is usually carried by travellers under ordinary circumstances; it was not for the traveller's personal use or convenience.

*Macnamara* in reply.—This is not furniture, but a child's toy. It is personal luggage if carried for the traveller's own use or for his family. The size of the article is immaterial, as it is within the weight allowed.

LUSH, J.—I am of opinion that the judgment of the county court judge must be affirmed. It must be taken that the company intended by their regulations to express the same thing as was expressed by their own Act of Parliament, although they have used a different phraseology. The regulation was that passengers should carry a certain weight of luggage, not being merchandise or other articles carried for hire or profit free of charge. Now it has been contended that the articles excluded by this rule are only those articles which are carried for hire or profit, and that if a thing is ordinarily carried by passengers, within the proper weight, such an article is personal luggage. I admit that it is extremely difficult to frame a definition which shall embrace all that is included within these words. I cannot say that I am satisfied with any definition yet given, but at all events the interpretation put on

these words by the respondents is too narrow—namely, that it embraces only those things that the traveller takes for his own personal use and convenience while travelling. I am not inclined to put so narrow a limit to the words. The words “ordinary luggage” mean something more than what a passenger wants for his own personal use and convenience. It describes a class of articles, and has reference to a description ordinarily and usually carried by passengers as their luggage. Taking this to be the meaning of the regulation it is intended to have regard to those things which are usually carried by them. The article in question goes beyond that limit. This was an article called a child's toy. It was a spring horse substituted for an improved rocking horse, 78 lbs. in weight and 44 inches in length, and cannot come within the meaning of a toy, which is something to be carried in the hand; nor that of personal luggage in the sense I have mentioned, namely, that description of luggage which passengers usually carry.

HANNEN, J., concurred.

HAYES, J.—I quite agree. I think the interpretation to be placed on these words must vary according as the habits and wants of travellers change. Pistols in America may be the ordinary luggage of travellers there, but at the present time they are not so here. It is said that this is a toy for a child, but it seems to me to be more like a horse; instead of the child carrying it, the horse is to carry the child. It would require a special carriage for it, a horse box in fact. The weight is quite exceptional and without laying down any definition it is sufficient to say that this is within it.

*Judgment for respondents.*

YOUNG v. AUSTIN.

*Bill of exchange—Co-temporaneous agreement in writing—Demurrer.*

To an action on a bill of exchange by the drawer against the acceptor the defendant pleaded that he accepted the bill upon a certain condition—viz., that the plaintiff should renew the bill, if the defendant did not receive payment of certain moneys from C. before the bill became due.

Held, a good plea, and that it was not necessary to state in the plea that the condition was in writing.

[C. P. 17 W. R. 706.]

The declaration was on a bill of exchange by the drawer, against the acceptor, payable to drawer two months after date.

Plea.—The defendant says that he accepted the said bill upon a certain condition agreed upon between the plaintiff and defendant as part of the consideration for the said bill, viz., that the plaintiff should renew the said bill for a further term of two months beyond the date at which the said bill was payable, if, when the said bill became due, the defendant should not have received payment from the Corporation of the City of London of a certain sum of money then due to him as compensation, and the defendant accepted and delivered to the plaintiff, and the plaintiff received and always held the said bill upon and subject to the said condition, and at the time when the said bill became due, and at the time when this action was brought, the defendant had not received the said money and compensation, of all which the plaintiff had notice; and the defendant did all things necessary to entitle