Meehan v. Walsh.

Notice of trial—Amendment—A. J. Act, 1873.

Notice of trial was given by mistake for the 11th January instead of 10th January. The defendant did not appear to have been misled. *Held*, That the plaintiff might amend under the A. J. Act, 1873.

[January 10, 1876.—Mr. Dalton.]

Notice of trial had been served on January 3rd for the 11th instead of the 10th of the same month. A summons was obtained calling on the defendant to show cause why the notice should not be amended by changing the date to the 10th.

Murphy showed cause. This is not a case in which amendment should be allowed. A defendant would be justified in paying no attention to such a notice, and he should not therefore be forced to go to trial when he might not have made preparation, relying on his opponent's irregularity.

Mr. Keefer (Hodgins & Black), contra. It is shown that the plaintiff's attorney had made inquiry, and was under a *bona fide* belief that the Commission day was the 11th January. It was well known among the profession that the Assizes would commence about that time, and the defendant could not have been misled. The motion to amend had been made as soon as the plaintiff became aware of the mistake: *Graham* v. *Brennan*, 11 Irish L. R. App., p. 17.

Mr. Dalton remarked that in granting this and other applications of the same kind, which had been made lately, a new practice might seem to be instituted, but he thought this was a case in which the powers of amendment granted by the Administration of Justice Act might properly be exercised. Before the passing of that Act, no such application could have been granted. Now, however, it is enacted that no proceeding at law shall be defeated by any formal objection, and he, therefore, thought that he was justified in making this summons absolute. The proper county was named in the notice, it was correct in every respect except the date, and it was scarcely possible that it could have misled the defendant. Summons made absolute on payment by the plaintiff of the costs of the application.

IN THE FIRST DIVISION COURT OF THE COUNTY OF SIMCOE.

Bennett v. Vickers.

Express Company—Agents' powers and liabilities—"Collect on delivery"—Notice to consignor—Collection beyond Company's limits.

A parcel was left with an express company's agent, c.o.d. The consignee lived beyond the express company's limits. The parcel was received by the agent without objection and forwarded by him, and delivered to consignee without the sum due being collected: *Held*, that the company were liable.

The extent of the authority of an agent of an express company, and the liability of the latter under the circumstances set out in this case, discussed.

[Barrie, November 23, 1875.—Ardagh, J. J.]

The plaintiff claimed to recover from the defendant, a carrier of goods by express, the value of a parcel delivered to him to be carried to Bracebridge.

The plaintiff's case was as follows: About the 1st of February last, having received an order from one Gow, living at Bracebridge, for some goods, the plaintiff made up a parcel containing same, addressed to Gow, and marked C.O.D. With the parcel, and inserted underneath the string fastening the parcel, he sent a bill of the goods in an envelope, not closed up, also addressed to Gow. At the trial the plaintiff called his son (a grown-up lad), who detailed how he had on the day in question taken this parcel to the express office in Barrie, and, after some little delay—owing to the clerk whose duty it was to receive such parcels being otherwise engaged—delivered it to one Charles Edwards, a clerk in the office of Mr. Edwards, the defendant's agent. He called his (Edwards') attention to the bill accompanying it, and told him it was C.O.D.

For the defence, Charles Edwards, the clerk above named, was called, and admitted that he could not swear that the envelope alluded to was not there, and that though plaintiff's son, when delivering the parcel, may have said C.O.D., yet he did not point to the bill. He stated that the limits of defendant's delivery did not extend beyond Severn Bridge, where the line of the Northern Railway Company ended; that any parcels for delivery beyond that were handed by the defendant's agent there to the stage-driver, who carried them on to their destination. One Johnson was also called by the defendant. He stated that he had charge of the express business in the absence of the defendant's agent at Barrie; that they invariably refused to collect