UNITED STATES REPORTS.

SUPREME COURT OF THE UNITED STATES.

Southern Express Company v. Dixon.

Delivery to consignee of goods at place other than destination.

T., one of the firm of T. & R., delivered to an express company at Greensboro, N. C., goods consigned to the firm of T. & R. at Columbia, S. C., at the time informing the company that the goods were the property of D. Subsequently, without the consent of D., the express company delivered the goods at Greensboro upon the order of T. *Held*, that the company were liable to D. for the value of the goods.

[15 Albany L. J. 491.

In error to the Circuit Court of the United States for the Southern District of Alabama. The facts appear in the opinion.

Mr. Justice Hunt delivered the opinion of the court.

The case in brief is this: The agent of the plaintiff Dickson, delivered to the express company at Greensboro, North Carolina, fifty-twe boxes of tobacco to be shipped to Columbia, South Carolina. The boxes were consigned to Trent & Rea at that place, and the delivery to the company for shipment was made by Trent, one of the said firm, who at the time informed the company that the tobacco was the property of the plaintiff. A written receipt was given by the company in the usual form. The boxes never left Greensboro, but were sold by Trent to one Mendenhall, without authority of the owner, and by the order of Trent were delivered to him by the company at Greensboro.

The court charged the jury that, if they believed from the evidence that the tobacco was, at the time of its delivery to the defendant, the property of the plaintiff, and that was known to the defendant or its agent, though by the receipt given for it Trent & Rea were the consignees thereof, and the defendant might lawfully deliver the said tobacco to the consignees at Columbia, South Carolina, the defendant was not authorized to deliver the same to the consignees, or either of them, or to any other person by the order of either of them, at Greensboro, North Carolina, the place of shipment, and such delivery at Greensboro, North Carolina, without the knowledge or consent of the plaintiff, would not discharge the defendant from liability therefor to the plaintiff. To which charge of the court the defendant then and there excepted.

By various requests to charge the defendant presented the point in different forms, but the question of law is clearly indicated by the charge given and the exception thereto. If the express company was justified in delivering the property at the place of its intended shipment upon the order of Trent, it is not liable in this action. If not so justified, but if it was bound to transport and deliver as agreed in its receipt, or to deliver it to the owner, then it is liable, and the judgment should be affirmed.

We are not called upon to question the proposition that a consignee of goods is for many purposes deemed to be the owner of them, and may maintain an action for their non-delivery. 1 Par. Ship. 269. In the case before us the proof was given, and the jury found that the goods did not belong to the consignees, but were the property of the shipper, and that this was known to the carrier. The question is, rather, where it is known that the goods are the property of the shipper, and have been shipped by him for delivery to the consignees as his agents at a distant place, can the carrier deliver the goods to such consignees or to their order at another place, or without starting them on their journey? We think the rule is that where the consignor is known to the carrier to be the owner, the carrier must be understood to contract with him only, for his interest, upon such terms as he dictates in regard to the delivery, and that the consignees are to be regarded simply as agents selected by him to receive the goods at a place indicated. Where he is an agent merely, the rule is different. This is illustrated by the case of *Thompson* v. *Fargo*, 49 N. Y. 185. Thompson had, as the agent of White, collected certain moneys belonging to White, and inclosing them in a package directed to White at Terre Haute, Indiana, sent the package from Decatur, in the same State, by the express company. Various attempts were made to deliver the package to White, but he could not be found, and Thompson, the shipper, at length demanded the return to him of the package, and on refusal brought an action to recover its value. The Court of Appeals of New York held that the action could not be maintained, saying that if the case had been one of a sale by the consignor with no directions from the consignee how to ship the goods, an action might have been sustained by him, as the title would remain in him, but when the consignor was the mere agent, having no interest in the property, but acting in pursuance of the orders of the owner, in shipping the property, he could not maintain an action; that a delivery to him would be no defense to an action by the owner. The case of *Duff* v. *Budd*, 3 Brod. & B. 177, holds the same rule.

The numerous cases cited by the plaintiff in error, to the effect that any delivery to the consignee, which is good as between him and the carrier, is good against the consignor, are cases