

Eng. Rep.]

McDONOUGH v. BROPHY.

[Irish Rep.]

case, is inaccurate, if it implies any negligence on the part of the company, all the negligence having flowed from one source, namely, the conduct of the passenger, and the whole loss having been occasioned thereby. The verdict is, that the company's servants were not negligent, and the passenger was, and that by his negligence he contributed to the loss, the other contributory thereto being the thief to whom such negligence gave the temptation and the opportunity. The question, apart from the more general one, as to the extent of liability for passenger luggage, is thus reduced to whether there was any sufficient evidence to justify the jury in finding that the loss was occasioned by the passenger's negligence in the sense of neglect of duty; whether, in fact, the passenger, as between him and the company, assumed any duty in respect of the portmanteau, for in the absence of duty there could be no negligence such as to affect his remedy against the company. Upon this we are of opinion that the jury were justified in inferring from the circumstances of the portmanteau being put, with the passenger's assent, and of course for his convenience, into the carriage in which he was to travel, and so out of the immediate and active control of the company's servants instead of the ordinary luggage van, where it would have been under such control, that it was intended by both parties, and was an implied term of the contract of carriage, that in return for the convenience of having his luggage at hand, the passenger should during the journey take such reasonable care of his own property as might be expected from an ordinary prudent man, and should not by his negligence expose it to more than the ordinary risk of luggage carried in a passenger carriage, and that the finding of negligence in not using such reasonable care was sustained by the evidence.

This is enough to dispose of the case, but it may be proper to say a word on the questions left to the jury, and their answers as to the delivery of the goods, and the responsibility successively assumed by the company and the plaintiff. The first, finding that there was a delivery to the servants of the company, decides nothing as to the terms of the delivery; the second, finding that there was such an assumption of personal control of the portmanteau when delivered into the carriage at the plaintiff's desire, as to amount to an entire resumption by him of his liability, and the finding that if so there was at Swindon a fresh undertaking of liability on the part of the defendants, appears to be inconsistent; for if the plaintiff, upon getting his luggage into the carriage, resumed the entire liability, he could not cast it back upon the company by his own neglect; and in strictness, perhaps, the latter finding ought to be rejected, leaving the former conclusive against the plaintiff. We do not, however, proceed upon this ground, seeing that the question which led to the former finding involved matter of law, as to which the plaintiff ought not to be concluded by the verdict. Had the case turned upon this point, we might have thought it necessary to direct a new trial. Upon the ground first explained, however, namely, that the general liability of the company was, under the circumstances, modified by the implied condition that the passenger should use reasonable

care, and that the loss was caused by his neglect to do so, and would not have happened without such neglect, we think the judgment of the county court ought to be reversed, and the verdict entered for the defendants. The costs must follow the event.

Judgment for the appellants.

McDONOUGH v. BROPHY.

Practice—Computation of time—Exclusion of Sundays—Construction of the Common Law Procedure Act (Ireland) 1870 (33 and 34 Vict. c. 109), s. 6.

33 & 34 Vict. c. 109, is to be read together with the Common Law Procedure Act (Ireland), 1853, and consequently the eight days mentioned in section 6 of 33 & 34 Vict. c. 109, within which an application may be made to remit an action to the Civil Bill Court, are exclusive of Sundays, as provided by section 232 of the Common Law Procedure Act (Ireland), 1853.

(C. P., Ireland, 19 W. R. 157.)

Application under 33 & 34 Vict. c. 109, s. 6, to remit for trial in the Civil Bill Court an action for slander. The section requires that such an application should be made within eight days from service of the summons and plaint. If Sundays were to be included in the eight days, the application was not within eight days.

G. Fitzgibbon for the defendant.—Sundays are not included in the eight days, and the application is therefore in time.

Purcell, Q.C., and *C. Coates*, opposed the motion.—Sundays are included in the eight days: *Brown v. Johnson*, 10 M. & W. 331; *Rowberry v. Morgan*, 2 W. R. 431, 9 Ex. 730; *Peacock*, appellant, *The Queen*, respondent, 6 W. R. 517, 4 C. B. N. S. 264; *The Queen v. Justices of Middlesex*, 7 Jur. 396. At common law Sunday is just like any other day. The Common Law Procedure Act, 1853 (16 & 17 Vict. c. 113), is not incorporated with 33 & 34 Vict. c. 109.

G. Fitzgibbon, in reply.—The whole question is whether the Act of 1853 is incorporated with the present Act. By section 232 of the Act of 1853 Sundays are not to be counted in legal proceedings. If Sundays and holidays are included in the eight days, it will be possible to evade the section altogether by bringing an action on the day before Christmas-day, it and the seven following days being holidays. *Rowberry v. Morgan* was decided on the ground that the General Orders were not intended to interfere with the statute: *Smith v. Grant*, 6 Ir. Jur. 317, *Ferguson's Practice*, 23.

LAWSON, J.—I am of opinion that this application ought to be granted. The present Act and the Common Law Procedure Act of 1853 ought to be read together. The one is called an amendment of the other. I think the case must be governed by the 232nd section of the Common Law Procedure Act of 1853.

MORRIS, J.—I am of the same opinion, but at first I had considerable doubts about the question. The Common Law Procedure Act of 1856 dealt with nothing new. Yet it was expressly stated that it was a part of that of 1853. The Bills of Exchange Act (9 Geo. 4, c. 24), had a special section relating to holidays. In this Act the point is left to be decided. The consequence is that difficulties have arisen from what appear