

Eng. Rep.]

THE GREAT WESTERN RAILWAY CO. V. TALLEY.

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judge was requested by the appellant's attorney to direct a non-suit, on the ground that there was no evidence that respondent had entrusted the portmanteau to the care of the appellants, and on the ground that there was evidence of contributory negligence on the part of the plaintiff. It was thereupon contended by the plaintiff's counsel, that if it was an action of contract, the doctrine of contributory negligence did not apply; and that if it were an action of tort, any private Act of Parliament limiting the liability of the court could not, under rule 96 of the County Court Rules and Orders, be given in evidence. It was admitted and agreed to by the defendant's attorney, that this action was to be treated as an action of contract entirely.

The judge declined to nonsuit the plaintiff, and received the defendant's evidence, and upon the whole case, subject to the objection of the plaintiff's counsel, that the question of contributory negligence should not be left to the jury, the verdict of the jury was taken by the judge in answer to the five following written questions, with further explanations by the judge:

1. Was there a delivery to the Great Western Company's servant, or porter, at Cheltenham station, by the plaintiff on his arrival there?

2. Was there 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 liability?

3. If so, was there at Swindon a fresh undertaking of liability on the part of the defendants?

3. Was there a want of due diligence on the part of the defendants' servants at Swindon, when their attention was called to the loss of the portmanteau?

5. Did the plaintiff, by his negligence, contribute to the loss of the portmanteau?

The jury answered the first three questions in the affirmative, the 4th in the negative; and to the 5th, replied—Yes. Thereupon both the appellants and respondent claimed the verdict. The judge directed a verdict to be entered for the respondent for £16 10s., the amount claimed, and granted leave to the defendants to appeal.

In further explanation of the fourth question, the judge also asked the jury broadly, whether there was at Swindon any negligence on the part of the appellants.

A further question was raised at the trial, upon which the opinion of the court was requested, should they, upon the above state of facts, consider that the respondent was entitled to the verdict; but should the court be of opinion that the appellants were entitled to the verdict, this further question will not be necessary.

The 169th section of 5 & 6 Will. 4. c. 107, and the 169th section of 6 Will. 4. c. 77, is as follows:

"And be it further enacted, that without extra charge it shall be lawful for every passenger travelling upon or along the said railway to take with him his articles of clothing not exceeding 40lbs. in weight and four cubic feet in dimensions, and the said company shall in no case be in any way liable or responsible for the safe carriage or custody of or for any loss of or injury to any articles, matters, or things whatsoever carried along or upon the said railway with, or

accompanying the person of, or belonging to, any passenger, or delivered for the purpose of being carried, other than and except such passenger's articles of clothing, not exceeding the weight and dimensions aforesaid. Provided always that nothing herein contained shall in any case extend, or be deemed or construed to extend, to charge, or make liable the said company further or in any other case than where, according to the laws of this realm for the time being, stage coach proprietors and common carriers would be liable, nor shall anything herein contained extend, or be deemed or construed to extend, in any degree to deprive the said company of any protection or privilege which either now or at any time hereafter common carriers or stage coach proprietors have or may have, but the said company shall from time to time and at all times have and be entitled to the benefit of every such protection and privilege."

The company's time bills contain the following regulation:

"Luggage.—First-class passengers are allowed 120lbs.; second-class passengers, 100lbs.; and third-class passengers, 60lbs. of personal luggage only, free of charge. All excess will be charged for according to distance."

"Children paying half-fare are allowed half the above quantity of luggage. All excess will be charged for according to distance. Passengers are requested to see the company's label placed upon each article of their luggage, otherwise it will not be put into the train."

"In order to prevent delay and inconvenience on the re-delivery of luggage at the end of the journey, passengers are requested to place on each article their name and address. And notice is hereby given that the company will not be responsible for the care of the same unless booked and paid for."

It was contended on the part of the appellants that the Act of Parliament limited their liability to articles of clothing, and could not be affected by the regulations; and if such regulation was valid and binding the company would, by the concluding paragraph, be released from all liability whatever.

For the respondent, who gave the regulation in evidence, it was contended that he would be entitled by it to carry personal luggage, and the company would be liable for it, notwithstanding the Act of Parliament recited above. It was further contended that the appellants were rendered liable for personal luggage by the Railway and Canal Traffic Act, 17 & 18 Vict. c. 31, s. 7.

It is admitted that the great coat, the sundries, and the portmanteau itself, amounting in value to £4 10s., are articles of clothing within the meaning of the recited Act, for the value of which the company is liable if their liability is limited to articles of clothing only, subject to the opinion of the court upon the respondent's claim to have the spurs included.

The questions for the opinion of the court are,

1. Should the judge have directed the respondent to be non-suited?

2. Should the question of the plaintiff's contributory negligence have been left to the jury?

3. Should the verdict upon the finding of the jury have been entered for the appellants or respondent?