

Eng. Rep.]

THE GREAT WESTERN RAILWAY CO. V. TALLEY.

[Eng. Rep.]

was a conspiracy during the existence of the partnership to do something which, upon its taking effect, would be illegal in every sense of the word; and assuming for the present purpose that no action would have been brought, there would certainly have been an equitable remedy on the dissolution of the partnership. I think that the facts of this case bring it within the principle of the authorities which have decided that an act not criminal in one person acting alone, may become so if carried out by two or more acting in combination.

Conviction affirmed.

COMMON PLEAS.

THE GREAT WESTERN RAILWAY CO., *Appellants*;
TALLEY, *Respondent*.

Railway company—Common carrier—Passenger's luggage—Negligence of passenger.

A passenger by the G. W. Railway from Cheltenham to Reading took his portmanteau into the carriage with him at Swindon. Having left the train for refreshment, he failed to find his carriage, and continued his journey in another carriage. When the train arrived in London, the portmanteau was found in the carriage in which it had been placed at Cheltenham, but it had been cut open, and the contents were gone.

In an action by the passenger against the company for the value of the articles, the jury found that there had been negligence on the plaintiff's part, but not on that of the company.

Held, that the general liability of the company was, under the circumstances, modified by the implied condition that the passengers should use reasonable care, and that as the loss was due to his neglect alone, the verdict was to be entered for the company.

[C. P., 19 W. R. 154.]

This was an appeal from the judgment of the County Court. The action was tried in the Marylebone County Court on the 31st of October, 1869, and a verdict was given for the respondent for £16 10s. A new trial was subsequently granted, and such new trial came on for hearing on the 1st of December, 1869, before the deputy judge and a jury.

The following is a statement of the particulars of claim:—For that the defendants were carriers of passengers and their luggage from Cheltenham to Reading, and that the defendants, on the 27th day of March, A.D. 1868, promised for reward paid to them by the petitioner in that behalf, to carry the petitioner and his luggage safely and securely from Cheltenham to Reading, yet the defendants did not so convey the petitioner's luggage safely and securely, but entirely made default in so doing, whereby the petitioner was deprived of the said luggage, and was put to much trouble and expense in endeavouring to obtain the same, and in providing other goods in the place of the said luggage, and the petitioner claims £18.

At the trial of the action the following facts were proved:—The respondent (the petitioner in the county court action) on the 26th of March, took an ordinary first-class return ticket from Reading to Cheltenham and back. Reading is a station on the Great Western original main line, as authorised to be constructed by an Act of Parliament (5 & 6 Will. 4, c. 107), and Cheltenham is also a station belonging to the Great Western Railway Company, and the railway from Cheltenham to Swindon (on the main line) was

authorised to be constructed by 6 Will. 4, c. 77. The respondent, in time for the 6.50 train on the 27th of March, went to the Cheltenham station, and on arriving at the station he handed his portmanteau to the guard and got into a first-class carriage, and the guard placed the portmanteau under the seat of the carriage. Plaintiff travelled safely with his portmanteau to Swindon, and on arriving at that station, he got out for the purpose of taking some refreshment, ten minutes being the time allowed by the company's printed regulations for that purpose. Four other passengers had travelled in the same carriage with the petitioner, who all got out at the same time for a like purpose.

The respondent was away for nearly ten minutes at the refreshment room, and on his return to the platform he was unable to find the carriage, which, with all the first-class carriages that came from Cheltenham, had, in his absence, and without intimation to him, been shunted on to the main line, as carriages usually are at Swindon station. It was sworn by the plaintiff that, upon making immediate inquiries of the guard, he was informed that the carriage he had occupied was not going on, and that his luggage had been removed into the van. He further alleged that he continued to remonstrate with the guard, and eventually, having delayed the train some minutes, entered another carriage.

Vale, the guard from Cheltenham to Swindon, denied the plaintiff's statement that he had informed him the carriage was not going on, and his luggage was removed into the van. He swore that when spoken to by the plaintiff about the loss, he pointed to the carriage in which the portmanteau was, the doors of which were not locked.

The plaintiff did not recognise the carriage as the one he had travelled in, and the guard did not go with the plaintiff to where it stood, because he feared ill treatment from some of the passengers, who had travelled to Swindon in some of the shunted carriages. The guard further proved that the carriages had been shunted by one of the company's servants, not called at the trial, and that no extra servants had been employed at the station on that night, in consequence of which (it being a full train returning from Cheltenham races) the train was delayed ten minutes beyond its proper time there; and that he told Mr. Talley two of the carriages were not going on to London.

All the first-class carriages by the train in question, except two, which had joined the train from South Wales and had not come from Cheltenham, went up to London by the same train as respondent quitted at Reading, and on arriving in London the portmanteau was found by Farquharson, the guard, who joined the train at Swindon, in Vale's place, and who proved finding it in one of the carriages from Cheltenham; but it had, however, been cut open, and the following portion of its contents had been abstracted:—Field-glass, £7; spurs, £1; overcoat, £3; sundries, 15s; books, 10s.; portmanteau, 15s.; money, £3 10s.; making a total of £16 10s.; leaving a pair of hunting-boots and other articles which, with the portmanteau, were duly returned to the plaintiff.

At the conclusion of the respondent's case, the