No. 13294

Supreme Court of Illinois

Michigan Southern & Northern

Indiana R.R.Co.

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vs.

Meyers

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, 1859.

MICH. S. & N. I. R. R. CO.
vs.
JOHN MEYRES.

Appeal from Cook County.

The only evidence of the delivery of the baggage, in this case, is the evidence of Daily, who testified that he sent the baggage from Cleveland west double checked for Chicago. The defendant's road extended east only to Toledo. It is not pretended that Daily was in any manner authorized to act for the defendant. There is no testimony tending at all to show that he was; and Gray swears positively that he was not.

Page 39 of Record.

There is no proof that that baggage ever passed Toledo, or ever came into possession of defendant's agents.

The testimony of the plaintiff was improperly received to prove the contents of the baggage:

1. Because it had not been proved that the baggage had ever come into the possession of defendant.

Snow *vs.* The Eastern R. R., 12 Metclf. 44.
Clark *vs.* Spence, 10 Watts R. 335.
1 Greenlf. Ev. 455 and note.
Pierce Am. Railway Law, 502, 505.
Redfield on Railways, 310, 311, and Note.
Blanchard *vs.* Isaacs, 3 Barb. S. C. R., 349.
2 Kent. Com., 294.
Packard *vs.* Getman, 6 Cow., 757.

The plaintiff ought not to have been allowed to have testified in relation to the clock, finger rings, cigars, and books. The clock was not baggage. $18 worth of books could not be considered baggage.

10 Watts, 336.
Bingham *vs.* Rogers, 6 Watts & S., 500.

The qualifications to the defendant's instructions were all wrong, because they were not founded upon the testimony. The 1st instruction ought to have been given as asked. There is nothing in the record tending to show that Daily, at Cleveland, was authorised to receive baggage for defendants.

The qualification to the 5th instruction was wrong, because there is no proof in the case that Daily was authorized to act for defendants.

And for this reason the qualification to the 6th instruction was also wrong.

It is clear that from these instructions the jury must have inferred something which was not in the proof, or they would not have rendered a verdict against the defendant without the slightest actual proof that the baggage was ever received by defendant.

B. C. COOK, for Appellant

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R. B. Lee

vs

John Meyers

appellants brief

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1859

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

MICH. SOU. & N. I. R. R. Co., *vs.* *John Meyres.* } *Appeal from Cook County Circuit Court.*

Suit in Assumpsit by Meyers vs. the Company, August 18th, 1856.

3, 4, 5, 6, 7, 8, 9 & 10. Declaration filed October 16th, alleging defendants to be common carriers, from Cleveland via Toledo to Chicago; that on the fourth day of May, 1855, at Cleveland, plaintiff delivered to deft. certain goods and chattels, containing the baggage of the plaintiff, to wit: one trunk and one package marked, John Meyers, Chicago, Illinois, of the value of $419,59, to be delivered to him at Chicago; the defendant so negligently carried the same, that they were lost. The count was a count in Trover for the same goods.

11. Plea, general issue.

21. Bill of exceptions.

Trial by Jury; plaintiff offered deposition of William Daily, to the reading of which defendant objected for its irrelevancy; all other objections waived; objection overruled, exception by defendant. Said Daily testified in said deposition that he was baggage-master for Cleveland and Pittsburgh Railroad Company, in June, 1855, June 25th. A paper shown me was written by me. Papers as follows:

This is to certify, that I sent Mr. John Meyers' baggage to Chicago, in May last; the baggage was lost by him at Cleveland, on his way from New York to Chicago; the baggage was double checked for Chicago from this place, on or about the middle of May.

(Signed) WILLIAM DAILY.

Mr. Meyres was here at that time in search of his baggage, which he claimed to have been lost. Exhibit B. is a letter written by me to the then baggage-master of the S. M. & N. I. R. R. Co. at Chicago.

31. Exhibit B.

Dear Sir:—I have received some five or six letters about that baggage of Mr. Meyrs; I supposed that he had it long ago; it was double checked and sent to Chicago four or five weeks ago. If it has not got to Chicago yet, it must be at Toledo. Dated June 14th, 1855.

28. Exhibit C. is a telegraph reply to a dispatch received by me from Mr. Meyres inquiring about his baggage.

32. Exhibit C.

John Meyers sent your things to Chicago two days ago.

WILLIAM DAILY.

28. The baggage consisted of two or more chests; the letter exhibit B. was written in answer to a letter from the baggage-master of defendant at Chicago, making inquiries in relation to Mr. Meyres' luggage. The luggage claimed by Meyre, was in my possession in May, 1855; it came in on the train from Pittsburgh, and was unclaimed at the depot. Mr. Meyre went on without claiming it; it was in my care a short time, probably one day. Meyre telegraphed from Toledo inquiring about it, and I then sent it on checked to Chicago. I received the dispatch in the course of my employment at the depot, and forwarded the luggage upon receiving the dispatch. I have been engaged in the service of the C. &
29. P. R. R. Co. nearly six years; about three years and a half baggage-master on a passenger train; for the last two years I have been station baggage master at Cleveland.

32. Henry Camses testifies, I went with plaintiff to agents office, on Dearborn street; he asked about the goods; Mrs. Meyres as about the goods, their chests, &c.; there was a gentleman there; he said that the goods were burnt; he was standing behind the table; I don't notice him here; he was walking behind the counter, not saying anything in particular. She asked if anything was found out about the things, and he said, no, nothing found, it is burnt. Meyre came here the 10th of May, 1855.

Cross examined. Live on the West side; have lived there two years; went to the office of defts. agent in August, 1855. Dont know who the other man was, that I did not talk to, and particular that the gentleman in the office answered as I have stated. She asked if her things, chest, beds, boxes &c. had been found yet, and he said no, they had been burnt;
33. I have never seen the goods, myself; he said nothing about having seen the goods.

Dewit Robinson called by plaintiff, testified as follows:

I reside in Chicago; have been employed by defendants two years. Am now in their employ; I recognize Mrs. Meyre; I am in defendant's office, Dearborn street; she was there frequently, inquired for baggage several times in the summer of 1855.

Cross-examined. I never made any such statements as the last witness testified to. I recollect of Mrs. Meyres coming with a witness; I never knew the baggage was burnt, or that it was in possession of the company, and I could not have made the answer; all I said was that we had made inquiry after the baggage; I was all this time making an effort to find it; she was in six or eight times to see about the baggage; I dont know that the baggage was ever in defendant's possesion; I have made frequent inquiries about it at our depot in Toledo, but could never hear anything of it; I gave instructions to the baggage-master to look out for it, and frequently made inquiries about it of him. I wrote about the baggage at the request of Mrs. Meyers; Toledo is the astern terminus of defendant's road. From that place east the Cleveland and Toledo Railroad runs; it is an independent corporation; defendant has no agent in Cleveland to receive baggage that I know of.

Re-examined. I know Mrs. Meyres; I had a conversation with her in presence of the witness; it was in regard to finding baggage; at that time

I may have talked to her about her loosing it; there may have been other parts of her conversation that I do not remember; the defendant checks baggage over the Cleveland and Toledo road to Cleveland and Buffalo. I can only speak of baggage, I have no knowledge of the freight: my impression is that goods are shipped from Cleveland for Chicago, over the Cleveland and Toledo roads, and on reaching Toledo, the charges are paid by defendant's Company who collect the whole here; when baggage is mislaid, we put two checks on it for its destination; the object to designate it as stray baggage, and secure extra care.

Plaintiff called Collins Veight, who testified; I know Mrs. Meyres; I saw plaintiff get one box from defendant's depot; I was not at depot myself.

35. Plaintiff's counsel called John Meyres, who testified: I am plaintiff in this suit. Defendant objected to witness' testifying in his own case; 1st because he had not established the fact of delivery of his baggage to defendant, and secondly, objected to witness' stating the contents of his baggage, because said contents are not specifically set out in Narr. which objections were overruled by the court, and exceptions then and there taken by defendant.

35. John Meyres the Plaintiff, then testified as follows:

I had a trunk and two boxes which contained the following named articles, worth the respective sums set opposite to each of them. The list amounted to four hundred and thirteen dollars and forty-six cents and consisted of the men and women's wearing apparel, and also the following: One clock, $6, 3 window sheets $7, 2 boxes containing sugar bowl and tumblers $3.12, knives and forks $3, cuping cups $9.38, 5 bedsteads $3, table cloths $1.75, pillow cases $1, gold breast pin $5.75, gold finger-rings $10.50, German books $18, cigars $2, surgical instruments $39, towels $6, pictures $1.50, different things $8, Matrass $16, feather-bed $11, pillows and horse-hair cushions $9, kitchen utensils $6, hatchet and saw $2, three bed-quilts $5, blankets and matrasses $8, hammer and clothes-line 75c. All the items which have above been set down, except the clock, breast-pin, finger rings, cigars and books were excluded by the court. The part excluded amounted to $131,50. The whole of the plaintiff's own testimony was objected to by defendant. Objection overruled by the court, and exception then and there taken. Plaintiff rested. Defendant moved to strike out all the testimony in the case because there had been no proof of the contract stated in the Narr. Motion overruled, and exception.

39. George M. Gray testified: Am agent of defendant, and have been for five years. Toledo is the eastern and Chicago the western terminus of defendants road. The C. and T. R. R. runs east from Toledo. Defendant has no other business connexion with that company. We run to and from them, giving them business and taking business from them, both passengers and freight. Defendant has no agent in Cleveland for receiving baggage. The baggage master at Cleveland, whose deposition has been read, is not authorized to receive baggage for Defendant. He is not subject to their orders: he is not an employee of defendant. I know nothing of this baggage having been in possesion of defendant. I have made inquiries for it and written for it. In my absence Mr. Robinson acts for me.

Cross-examination. I am general agent of defendant at Chicago. Don't know William Daily—may have had some letters from him. I

made enquiries because Mrs Meyres came to my office in great distress. Inquired at the depot and wrote to Cleveland. Know nothing of baggage being burnt at time of fire in 1855. We receive baggage here and check through to Buffalo. Stray baggage is sent in the ordinary course of business from Cleveland; we never received a baggage checked from the Cleveland and Pittsburgh Company through to this place; in that direction we check to Cleveland, and deliver our stuff to the C and T Company at Toledo; I never offered to settle with Mrs Meyres by way of compensation; I have offered her $30; I wrote a receipt; it was not a written ack-
41 nowledgment of any claim; do not remember the exact wording of the receipt; I think it was simply a receipt of $30 on account of charity, she claiming damage on account of lost baggage at that time. We are in the habit of giving sums frequently; we use the word Charity in such cases.

Re-examination. The baggage man of the T and C R R Co., is in the habit of going on trains of C and P Co., and checking baggage for points east and west; defendant never undertakes to carry baggage beyond the line of its road we change baggage and passengers at Toledo. I never knew the cause of the fire which consumed our passenger depot two years ago.

Cross-exanination. We check baggage through to Cleveland, and Buffalo, and so advertised in the papers; this is offered as an inducement to travellers. Emigrants generally come and are deposited at freight depot. Passenger baggage comes to passenger depot; it was passenger depot that was burnt; emigrant baggage comes sometimes double checked. Plaintiffs might be considered emigrant baggage; it came double checked; it would have came to passenger depot. This was al
42. the evidence. No instructions were asked by plaintiff; defendant asked the court to instruct the jury as follows:

First, unless the jury believe that the plaintiff has established, by evidence, a delivery of the goods sued for to defendants road, then you will find for the defendant; and it is no evidence tending to show such delivery, that the goods were delivered at Cleveland to the C and T road, double checked for Chicago; which instruction the Court refused to give as asked, but added to the same the words, 'unless they shall find the same were so delivered, checked in the usual course of business, between the roads, and that there was such a course of business' to which refusal to give the instruction as asked and qualifying the same, defendant then and there excepted.

43. Fifth; that if the jury believe from the evidence that defendant's road extends only from Chicago to Toledo, and that there is a distinct road leading from Chicago to Cleveland and with which defendant has no connexion, then the law is for the defendant; which instruction the Court refused to give as asked, and added thereto the words, unless the jury shall find that defendants, in the course of their business, contracted with plaintiff to
44. carry the goods in question, and then gave the instruction as qualified, to which refusal of the Court to give the instruction as asked and qualifying the same, defendant then and there excepted.

Sixth; that the defendant is not responsible for the contracts of the C. & T. railroad, if said road are distinct corporations, unless the two roads are shown to be connected by contract, and engagement between themselves to act as agents for each other, which instruction was refused as asked; the court added the words, or have agents mutually employed to make contracts for each other, of the kind set forth in the declaration,

and then gave the instruction to which refusal of the court to give the instruction as asked, and qualifying the same, the defendant then and there excepted.

Eighth; that if the jury believe from the evidence that the defendant's
45. road extends only from Chicago to Toledo, and that there another distinct railroad extending from Toledo to Cleveland, and that the plaintiff delivered the goods in question to the latter road, evidence that the same were not received at Chicago is not sufficient to charge the defendant without proof to show that the same were in fact delivered from the C. & T. R. R. to the defendants road;

And the burthen of proving such delivery is on the plaintiff, which instruction the Court refused to give as asked, and added thereto the words but if the jury shall find that the baggage was received by the C. & T. R' R., and was checked from Cleveland to Chicago in the usual course of business over the defendant's road, then this is proper evidence for the consideration of the jury in determining whether the goods in question were deliverd to defendants. To the refusal of the Court to give the instruction as asked, and in qualifying the same, the defendants then and there excepted. The jury found for the plaintiff $400; defendant moved for a new trial; the court overruled the same on the condition that the plaintiffs would remit one hundred and twenty-eight dollars and forty-seven cents which he did; motion overruled; defendant excepted; judgment for
51. plaintiff $271 23-100.

ERRORS ASSIGNED.

1. The Court erred in admitting the deposition of William Daily.
2. The Court erred in admitting the testimony of the plaintiff.
3. The Court erred in overruling the defendant's motion to strike out all the testimony in the case, where plaintiff rested.
4. The Court erred in refusing each of the aforesaid instructions as asked.
5. The Court erred in pualifying the aforesaid instructions of the defendant severally.
6. The Court erred in overruling the motion for a new trial.
7. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

POINTS AND AUTHORITIES.

1. The testimony of William Daily was wholly irrelevant.
2. The testimony of the plaintiff should not have been received.
3. The testimony wholly fails to support the verdict.
4. The first instruction asked by defendant should have been given without qualification.

JUDD & COOK,
For Appellant.

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The Michigan Southern
& N. Ind. R.R. Company

vs

John Meyer

Abstract

Filed April 25. 1859
L. Leland
Clerk

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