Privy Council Appeal No. 48 *of* 1914.

The Grand Trunk Railway Company of Canada - - - - - - *Appellants,*

v.

Albert Nelson Robinson - - - - *Respondent.*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH APRIL 1915.

Present at the Hearing.

THE LORD CHANCELLOR.
LORD DUNEDIN.
LORD PARMOOR.
SIR GEORGE FARWELL.
SIR ARTHUR CHANNELL.

[*Delivered by the* LORD CHANCELLOR.]

The question raised in this appeal relates to the right of the respondent, who was plaintiff in an action in the High Court of Justice for Ontario, to recover damages against the appellants for injuries suffered by him in an accident on the appellants' railway. He was travelling in charge of a horse consigned under what is known as a "Livestock special contract," in a form authorised by the railway commissioners for Canada. The terms of the contract purported to relieve the appellants from liability for injuries arising from accident, even where caused by negligence, to a person travelling

with the live stock, in case he had been permitted to travel at less than full fare.

The course of the litigation disclosed much difference of judicial opinion. The court of first instance decided in favour of the respondent. The Court of Appeal for Ontario by a majority (Garrow, Maclaren, and Meredith, J.J.A.) reversed this decision, Magee and Lennox, J.J.A., dissenting. There was an appeal to the Supreme Court of Canada, and in that court, by a majority (Davies, Idington, Duff, Anglin, and Brodeur, J.J., the Chief Justice dissenting), the judgment of the Court of Appeal for Ontario was reversed. On an application for special leave to appeal to the King in Council this Board thought fit, in view of the importance of the question raised, to recommend that special leave should be given, but, in the circumstances, only on the terms that the appellants should, whatever the result of the appeal might be, pay the whole costs of this appeal as between solicitor and client.

Before adverting to the facts out of which the litigation arose it will be convenient to refer to certain provisions of the Railway Act of Canada. Apart from statute a carrier is liable in Canada, as in England, for injury arising from negligence in the execution of his contract to carry unless he has effectively stipulated that he shall be free from such liability. The freedom so to stipulate has been restricted in Canada by the Railway Act. Under section 340 no contract restricting liability for carriage is to be valid unless it is of a kind approved by the Railway Board, which is empowered to determine the extent to which such liability may be impaired,

restricted, or limited, and generally to prescribe by regulation the terms and conditions under which any traffic may be carried. Standard and special freight tariffs are to be filed with the board and to be subject to its approval, and are to be published, and made open to the inspection of the public at the railway companies' stations and offices. Under the Act the companies are, by section 284, put under a general obligation to carry and deliver with due care and diligence, and anyone aggrieved by a breach of this duty is to have a right of action, from which the companies are not to be relieved by any notice, condition, or declaration if the damage arises from negligence or omission. It is, however, to be observed that this right is expressed by the section to be given "subject to this Act." Their Lordships think that where, under section 340 and the other sections which deal with special tariffs, forms of stipulation limiting liability have been approved by the board, and the conditions for making them binding have been duly complied with, the companies are enabled in such cases to contract for complete freedom from liability for negligence.

In 1904 the board approved a form of live-stock special contract, and the order approving it was duly published. The appellants adopted this form, and, so far as appears, have complied with the conditions prescribed for its use. It is out of a contract in the approved form that the present question arises.

The facts of the case are shortly as follows: The respondent lives in the town of South River, in Ontario. He undertook to Dr. McCombe, who resides in that town, to go to Milverton and bring back a horse by rail from there. Dr. McCombe had arranged with Dr. Parker,

of Milverton, to buy the horse for him. When the respondent arrived at Milverton he went with Dr. Parker to see the horse, and it was thereafter brought to the appellants' siding to be put on one of their cars under arrangements made by Dr. Parker with their local agent. The respondent and Dr. Parker placed the horse in the car. Dr. Parker had originally been under the impression that the horse could travel without anyone accompanying it, but he had been informed by the agent that, for a long journey, it must be accompanied by someone. Arrangements had therefore to be made between Dr. McCombe, Dr. Parker, and the respondent for the latter to travel with the horse. After putting it on the train Dr. Parker went with the respondent to the agent's office, and Dr. Parker and the agent signed a contract in the presence of the respondent. Dr. Parker folded it up and said he should send it to Dr. McCombe by mail, but the agent told him in the respondent's hearing to give it to the latter to carry with him as it showed that he was travelling with the horse. The document was accepted by Dr. Parker, but he did not think it necessary to take the trouble of reading it through. The respondent himself did not read it, but simply put it in his pocket, where it remained till some time after the accident, when he gave it to Dr. McCombe. The officials on the train appear to have recognised the respondent, who looked after the horse, as the person travelling with it. He was not asked for any ticket or fare. In the course of the journey there was a collision due to the negligence of the appellants' servants and the respondent was injured.

The case was heard before Latchford, J., and a jury. There was no dispute as to the negligence, and the only question left to the jury

was the amount of the damages. These the verdict assessed at 3,000 dollars. The learned judge afterwards gave judgment for the respondent. In order to appreciate the significance of what he decided, it is necessary to turn to the terms of the special contract. This, as has already been stated, was substantially in the form prescribed by the Railway Board. It was expressed to be made between the appellants and Dr. Parker. It acknowledged the receipt from him of a horse, which the appellants undertook to transport to South River on the terms that their liability in respect of the horse should be restricted to a specified amount, in consideration of a rate lower than the full rate being agreed on. It went on to provide, as one of the stipulations on its face, that, in case the appellants should grant to the shipper, or any nominee of the shipper, a pass or privilege at less than full fare to ride in the train on which the horse was being carried, for the purpose of taking care of it while in transit and at the owner's risk as before mentioned, then as to every person so travelling on such pass or reduced fare, the appellants were to be entirely free from liability in respect of his death, injury, or damage, whether it was caused by the negligence of the appellants, or their servants, employees, or otherwise howsoever. The contract concluded with a declaration, signed by Dr. Parker as shipper, that he fully understood its meaning. Across it was printed in red ink, "Read this special contract." On the margin was put, "Pass man in charge " half fare." The document thus contained the authority to travel for the man as well as the horse. The practice was for the railway companies in such cases to obtain payment from the consignee on delivery, and Dr. McCombe

some days subsequently paid the appellants the amount of the freight, including the half fare for the respondent.

These being the material facts, the learned judge held that the respondent was not debarred from what he called his common law right. Any other view, he said, appeared to him to imply that by a contract to which he was not a party and of the terms of which he had no knowledge, his right to be carried without negligence was taken away. The Court of Appeal for Ontario by a majority reversed this judgment, on the ground that a contract excluding liability even for negligence had been made and was binding on the respondent. Their judgment was, however, overruled by a majority in the Supreme Court of Canada, who held that although the language of the contract purported to exempt the appellants from their liability, it did not contain the real terms on which the respondent travelled in the train which met with the accident.

It is obvious that the question on which this appeal turns is one as to the terms on which the respondent was accepted by the appellants as a passenger.

There are some principles of general application which it is necessary to bear in mind in approaching the consideration of this question. If a passenger has entered a train on a mere invitation or permission from a railway company without more, and he receives injury in an accident caused by the negligence of its servants, the company is liable for damages for breach of a general duty to exercise care. Such a breach can be regarded as one either of an implied contract, or of a duty imposed by the general law, and in the latter case as in form a tort. But in either view this general duty may, subject to such statutory restrictions as exist in Canada

and in England in different ways, be superseded by a specific contract, which may either enlarge, diminish, or exclude it. If the law authorises it, such a contract cannot be pronounced to be unreasonable by a court of justice. The specific contract, with its incidents either expressed or attached by law, becomes in such a case the only measure of the duties between the parties, and the plaintiff cannot by any device of form get more than the contract allows him.

A second proposition is that if the contract is one which deprives the passenger of the benefit of a duty of care which he is *primâ facie* entitled to expect that the company has accepted, the latter must discharge the burden of proving that the passenger assented to the special terms imposed. This he may be shown to have done either in person or through the agency of another. Such agency will be held to have been established when he is shown to have authorised antecedently or by way of ratification the making of the contract under circumstances in which he must be taken to have left everything to his agent. In such a case it is sufficient to prove that he has been content to accept the risk of allowing terms to be made without taking the trouble to learn what was being agreed to.

The company may infer his intention from his conduct. If he stands by under such circumstances that it will naturally conclude that he has left the negotiation to the person who is acting for him, and intends that the latter should arrange the terms on which he is to be conveyed, he will be precluded by so doing from afterwards alleging want of authority to make any such terms as the law allows. Moreover, if the person acting on his behalf has himself not taken the trouble to read the terms

of the contract proposed by the company in the ticket or pass offered, and yet knew that there was something written or printed on it which might contain conditions, it is not the company that will suffer by the agent's want of care. The agent will, in the absence of something misleading done by his company, be bound, and his principal will be bound through him. To hold otherwise would be to depart from the general principles of necessity recognised in other business transactions, and to render it impracticable for railway companies to make arrangements for travellers and consignors without delay and inconvenience to those who deal with them.

In a case to which these principles apply, it cannot be accurate to speak, as did the learned judge who presided at the trial, of a right to be carried without negligence, as if such a right existed independently of the contract and was taken away by it. The only right to be carried will be one which arises under the terms of the contract itself, and these terms must be accepted in their entirety. The company owes the passenger no duty which the contract is expressed on the face of it to exclude, and if he has approbated that contract by travelling under it he cannot afterwards reprobate it by claiming a right inconsistent with it. For the only footing on which he has been accepted as a passenger is simply that which the contract has defined.

Applying these principles to the facts of the present case, what is the construction to be put upon them by a court of justice? It may well be that the respondent did not actually know the latitude allowed by the law of Canada to railway companies. It is highly probable that he did not think of any such question as has arisen. But he must have known that he required to

obtain permission from the company in order to travel with the horse, and for the rest, the law imputes to him the duty of knowing its principles. He had taken a single ticket only when he came to Milverton.

The proper inference appears to be that when he and Dr. Parker had put the horse into the train, he went with Dr. Parker to the agent's office with the intention that Dr. Parker should make, as regards both the horse and himself, the whole of the necessary arrangements at the office. If Dr. Parker had been acting for himself, there can be no doubt that he would have been bound by the terms of the document he received from the agent and by his signature expressly told the company that he understood. Can the respondent be in a better position? On the evidence, can he say that the company's agent was not led by him to believe that Dr. Parker, by whose side he stood while the contract was being made, was making it with his assent:

"I was standing right there,"

he says in his cross-examination,

" alongside Dr. Parker.

" *Q.* What did Dr. Parker say after he had signed the " contract?—*A.* He folded the contract up and said he " would send that to Dr. McCoube by mail, and 'it will " 'be there before you will be there,' and he says, No. " 'you must give it to this man, he must carry it with " 'him, and it shows that he is travelling with this car.' " They just handed it to me and I put it in my pocket."

Under such circumstances the true inference is that the respondent accepted the document knowing that it contained the contract obtained by Dr. Parker for his journey, and in accepting it accepted all the terms which were set out on the face of the document, and which he would have seen had he taken the trouble to look at what was handed to him. It does

not appear possible to say, in this case, that he was misled in. any way, or that the agent need have done more than he did when he handed over a document which set out the terms offered for acceptance with great distinctness, in the form which the Railway Board had directed.

Such view is not inconsistent with any finding of fact by the jury, or even by the learned judge who tried the case. It is based on the legal consequences which flow from facts about which there is no controversy. The majority in the Court of Appeal for Ontario appear to have interpreted these consequences in the only way which the law warrants.

Having regard to the conclusions at which their Lordships have thus arrived, they will humbly advise His Majesty that the appeal should be allowed, and the action dismissed with costs in all the courts below. The appellants must, however, under the terms on which special leave to appeal was given, pay the whole of the costs of the appeal to the King in Council as between solicitor and client.

In the Privy Council.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA

v.

ALBERT NELSON ROBINSON.

JUDGMENT DELIVERED BY THE LORD CHANCELLOR.

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