

SUPREME COURT OPINIONS

RAILROADS LIABLE FOR GOODS UP TO DELIVERY.

Employer Not Responsible for Injuries to Employee, Caused by Fellow-Workman's Negligence.

SALEM, Or., March 10.—The Supreme Court today gave out opinions in three appealed cases. The principal rules of law laid down are as follows:

The liability of a railroad company for the transportation of goods beyond its own lines ceases when the company has delivered the goods to a connecting company.

A master is required to provide his servant with a reasonably safe place to work, but when he has done so he is not liable for the negligent acts of a co-servant whose carelessness may result in injury to a fellow-workman.

A merchant's books are not competent evidence of loans of large sums of money.

I. H. Taffie, respondent, vs. Oregon Railroad & Navigation Company, appellant, from Multnomah County; Alfred F. Sears, Judge; reversed. Opinion by Justice Wolcott.

September 17, 1918, the plaintiff shipped at Celilo Station, in Oregon, by defendant's railroad one carload of fresh salmon consigned to Chesbro Bros., Fulton Market, New York City. The bill of lading, signed by the shipper and the defendant's agent, so far as is necessary for an intelligent understanding of the controversy, is as follows:

"Received from I. H. Taffie the following described freight, in apparent good order, marked and consigned as noted below, contents and value unknown, to be transported to — (Do not insert port or place of destination on this system), and delivered in good order to the consignee at said station, wharf or landing. If said freight is to be forwarded beyond the lines of this company, to such company or companies whose line may be considered a part of the route to the place of destination, on payment of freight charges, together with such charges as shall have been advanced on the same."

The bill of lading provides that the car should be sent "on the fastest passenger train service consigned as above." The destination was marked "Chesbro Bros., Fulton Market, New York City."

It was also stipulated in the bill of lading that the conditions printed on the back thereof should be part of the contract. It was provided that "the company will not be responsible or liable for any loss, damage or injury to property, except upon its own line, and will not be responsible for any loss, damage or injury to property after the same shall have been delivered to any connecting carrier or freightman for further transportation."

Loss having been sustained by reason of delay somewhere east of Chicago, action was instituted to recover damages therefor, based upon the bill of lading. It was agreed that the bill of lading constituted the entire contract regarding the shipment, and the question was upon the proper construction of the bill of lading contract. The plaintiff contended that the railroad company had contracted to carry the freight to New York City by fastest passenger train service. The defendant took the position that it agreed only to carry the freight to the connecting line, "consigned as above." The lower court took the plaintiff's view of the contract and directed a verdict against the defendant, whereupon an appeal was taken to the Supreme Court.

The opinion of the latter tribunal lays down the general rule in America, that where a common carrier receives goods consigned beyond the line of the carrier the company is required to transport the goods to the terminus of its line, and to deliver them to a connecting carrier to be forwarded to their destination. With this the responsibility ceases. The court then says, after discussing the various features of the bill of lading, that it was intended by the parties that the responsibility of the O. R. & N. Co. should cease upon its delivering the car of salmon to the Oregon Short Line at Huntington. The judgment of the lower court is reversed and the cause remanded for further proceedings.

Carl O. Johnson, respondent, vs. Portland Granite & Stone Co., appellant, from Multnomah County; Alfred F. Sears, Judge; reversed. Opinion by Chief Justice Bean.

This was an action to recover damages for personal injuries alleged to have been received by the plaintiff through the negligence of the defendant. In 1916 the defendant owned and operated a quarry in Whitman County, Washington. For some months prior to August of that year Johnson had been working in the quarry excavating rock.

Among the workmen was one Nelson, who acted as powder-man, and whose business was to load and discharge holes drilled by him and other employees. The plaintiff was a common carrier, and his work was to drill holes at such places as might be designated by the foreman in charge of the work, and to assist Nelson by carrying powder and other supplies required by him. A man named Kraetsch also helped in this work.

On the afternoon of July 1 an attempt was made by Nelson to fire two blasts, but for some reason one of them did not explode, and the next morning, while Johnson and Kraetsch were attempting to remove the tamping from the missed hole the drill came in contact with the powder, exploding it and severely injuring the plaintiff. The grounds of recovery were that the stone company did not provide Johnson a safe place in which to work, because of the negligence of Nelson in ordering and permitting him to use a steel drill to remove the tamping from a missed hole; that Nelson, the powder-man, was incompetent and the defendant was negligent in retaining him in its service after knowledge of such incompetency, and that defendant was negligent in not promulgating rules by which the workmen of which the plaintiff could have avoided the danger. The plaintiff recovered judgment, and the defendant appealed.

The evidence shows that Nelson was known as a "fast man," and careless when in haste; that Nelson told Johnson the hole was "all right," and that Johnson did not know an explosion was liable to take place. He testified that he thought the charge had exploded, but that the tamping had not been entirely removed. The Supreme Court says:

"It is the duty of the master to exercise due care, to provide his servant a reasonably safe place in which to work, and when the exigencies of the business require, to make useful rules and regulations for the safe conduct of the business. He cannot exempt himself from liability by delegating these duties to any servant or employee, whatever his rank. But when the master has provided for his servant a reasonably safe place in which to work, he is not responsible because it afterwards may be demonstrated by the carelessness or negligence of a co-servant or employee, while in the discharge of duty pertaining to a mere operative, even though he be the superintendent or foreman in charge of the work."

It is held that Nelson was a co-laborer, that a safe place had been provided, and that Nelson's negligence was one of the risks Johnson assumed when he engaged in the employment. He knew that Nelson was careless, and yet continued to work with him; hence he cannot maintain an action for an injury received through such carelessness. It is also held that it does not appear that the stone company, in the exercise of reasonable care, should have foreseen the necessity for precaution by the making of rules governing the drilling out of tamping.

C. E. Harmon, appellant, vs. Charles Decker, respondent, from Josephine County; H. K. Hanna, Judge; affirmed. Opinion by Justice Moore.

Harmon, administrator of the Estate of Gaquet estate, brought suit to recover \$200, alleged to be due on an open account for goods, wares, merchandise and other property sold and delivered to defendant. Judgment was had for the \$200, whereupon he appealed. The errors assigned are based upon rulings of the lower court upon the introduction of evidence of the several items of account. The principal rules of law laid down in the decision are as follows:

"Before the books of a merchant or other tradesman can be used to prove an account it must appear that he has no higher evidence of its truth, and therefore that he had no clerk who sold the goods, or that the clerk, if he had one, is dead, beyond the jurisdiction, or otherwise inaccessible. Then, before he can introduce the books, the bookkeeper, if accessible, must be produced to prove that it is the book of original entries; if he had no bookkeeper, or he is inaccessible, then he may prove that it is the book of original entries himself. Books are secondary evidence, and only admissible in necessary cases; that the books will not establish considerable items for cash, nor accounts of third persons transferred to defendants, nor are they admissible at all to show the authority to make such transfer. Books of original entry are admissible to prove the price, sale and delivery of articles and the performance of labor or rendition of service, because such entries are made in the usual course of business. But such books are generally inadmissible to prove the loan of large sums of money, because transactions of this character are usually evidenced by promissory notes, checks and bills of exchange."

Salem Light & Traction Company, respondent, vs. F. R. Anson, appellant, on motion to dismiss the appeal: motion overruled. It was stated in the notice of appeal that the judgment was rendered June 18, 1918, whereas it was actually rendered on the 8th of that month, and it is so stated in the undertaking on appeal. The judgment is otherwise properly described in the notice. It was held that the mistake in the date was a clerical error, which could in no way have injured or misled the respondent.

SEEKING NEW HOMES.

A Party of Tennessee People Arrives in Yamhill County.

McMINNVILLE, Or., March 10.—Colonel Long arrived in McMinnville yesterday from his old home in Tennessee with a party of 25 homeseekers who will locate in Yamhill County. Most of them have come to buy farms and become permanent citizens.

More farming land has been sold in the past three weeks in Yamhill County than in any previous month in years. A number of the recorded sales are of large and valuable farms.

The total number of voters who have registered in Yamhill County to date is 972, out of a total of about 3500 electors in the county. The registrations are becoming more numerous as the time for holding the primaries and county conventions approaches.

A number of hop contracts have been filed with the Yamhill County Recorder in the past week. The prices stipulated range from 11 to 12½ cents. Early in the year a few contracts were made for 9½ cents.

A large number of taxpayers are paying taxes early in order to secure the advantage of the 3 per cent discount.

TO APPOINT PRIMARIES.

"Citizens' Committee of Clackamas Will Meet Wednesday."

OREGON CITY, March 10.—The citizens' committee of nine met in the office of the chairman, Colonel Robert A. Miller, this morning, and adjourned until Wednesday at 1 P. M. Before that time the chairman will secure by letter or by personal call the names of the members of the committee in regard to the mode of procedure. At Wednesday's meeting an address to the voters of the county will be drawn up, and a date set for the Citizens' primaries and county convention.

Some time in the week a call will be issued by Colonel Miller, chairman of the Democratic County Convention. This convention will elect delegates to the state, district and Congressional conventions, and place a county ticket in the field. Should a Citizens' ticket and a Democratic ticket be put up, as now seems probable, it is likely to result in a division of the Republican opposition. The anti-Pullman Democrats are probably in the minority, but they are determined to have a straight party ticket in the field, and this ticket will pull several hundred votes away from the Citizens' ticket.

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