Parker v South Eastern Railway Co (1877) 2 CPD 416

(Common Pleas Division, 1876, vol. 1).

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May 1.

PARKER *v.* THE SOUTH EASTERN RAILWAY COMPANY.

Railway Company—Bailment—Deposit of Property in Cloak-room—Ticket—Condition indorsed thereon—"See Back."

On the deposit of articles at the cloak-room at a railway-station, a charge is made of 2*d.* for each, and the depositor receives a ticket on the face of which is printed the times of opening and closing the cloak-room, and the words "See Back;" and on the back there is a notice that "the company will not be responsible for any package exceeding the value of 10*l.*" A placard, upon which is printed in legible characters the same condition, is also hung up in a conspicuous place in the cloak-room.

The plaintiff deposited his bag (of the value of 24*l.* 12*s.*) in the defendants' cloak-room, paid 2*d.*, and received a ticket. The bag was lost or stolen. In an action to recover its value, the plaintiff swore that, on receiving the ticket, he placed it in his pocket without reading it, imagining it to be only a receipt for the money paid for the deposit of the article; that he did not see the condition at the back of the ticket; nor did he see the notice hung up in the cloak-room. The judge left two questions to the jury,—1. Did the plaintiff read or was he aware of the special condition upon which the article was deposited? 2. Was the plaintiff, under the circumstances, under any obligation, in the exercise of reasonable and proper caution, to read or to make himself aware of the condition?

The jury answered both questions in the negative, and a verdict was entered for the plaintiff:—

Held, that, upon these facts and findings, the company were responsible for the loss of the bag.

Mere notice, not brought home to and assented to by the depositor, is not enough in such a case to relieve the company from liability.

Henderson v. *Stevenson* (Law Rep. 2 H. L., Sc. 470) commented upon.

ACTION against the South Eastern Railway Company for the value of a bag and its contents lost to the plaintiff through the negligence of the company's servants.

The cause was tried before Pollock, B., at Westminster on the 27th of February last. The facts were as follows:—The plaintiff was a passenger by the defendants' railway. On arriving at Charing Cross station he deposited his portmanteau and travelling-bag in the cloak-room of the defendants, paid 4*d.*, and received from the attendant a ticket on the face of which was the following:—

South Eastern Railway. Charing Cross Station.
2 articles.

The public are informed that the office for the receipt and delivery of left luggage will be open on week days at 9 a.m., and closed at 11 p.m., and on Sundays from 7 a.m. to 11 a.m., and from 12.30 to 10 p.m.

After the expiration of seven days, property of this kind not taken away by the owner must be sent to the unclaimed property office.

3386. L.B. 5th April, 1875.

[See Back.]

At the back of the ticket was a notice, as follows:—

This company will not be responsible for articles left by passengers at the station unless the same be duly registered, for which a charge of 2*d.* per article will be made, and a ticket given in exchange; and no article will be given up without the production of the ticket, or satisfactory evidence of the ownership being adduced. A charge of 1*d.* per diem in addition will be made on all articles left in the cloak-room for a longer period than twenty-four hours. The company will not be responsible for any package exceeding the value of 10*l.*

The plaintiff on his return to the station a few hours after he had so deposited them, presented the ticket and demanded the portmanteau and bag. He received the former, but the latter (which with the contents was of the admitted value of 24*l.* 10*s.*) could not be and never was found.

The answer relied on by the company was the condition printed at the back of the ticket, and also the fact that a notice to the same effect was printed in legible characters on a placard which was publicly exhibited in a conspicuous part of the cloak-room. The plaintiff denied having seen either; saying that, on receiving the ticket, he placed it in his pocket without reading it, as he imagined it to be only a receipt for the money paid for the deposit of the articles. He admitted, however, that he had received such tickets before.

The learned judge, having had his attention called to *Henderson* v. *Stevenson* (1), left two questions to the jury,—1. Did the plaintiff read or was he aware of the special condition upon which the articles were deposited? 2. Was the plaintiff, under the circumstances, under any obligation, in the exercise of reasonable and proper caution, to read or to make himself aware of the condition? (2)

The jury answered both these questions in the negative, and the learned Baron thereupon directed judgment to be entered for the plaintiff for the amount claimed, reserving leave to the defendants to move to enter judgment for them.

(1) Law Rep. 2 H. L., Sc. 470.

(2) See *Symonds* v. *Pain*, 6 H. & N. 709; 30 L. J. (Ex.) 256.

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Feb. 1. *Willis* moved to set aside the judgment entered for the plaintiff, and enter judgment for the defendants, "on the ground that, upon the facts admitted at the trial, and notwithstanding the findings of the jury, the judge ought to have entered judgment for the defendants," or for a new trial, "on the ground of misdirection in telling the jury that they should find a verdict for the plaintiff if they thought that, considering the plaintiff's knowledge of the world and of life, and the nature and character of the transaction, he had used proper caution in not having read the document given to him at the time of the deposit." [He cited *Van Toll* v. *South Eastern Ry. Co.* (1), *Lewis* v. *M'Kee* (2), and *Stewart* v. *London and North Western Ry. Co.* (3)]

Prentice, Q.C., and *F. Pollock*, shewed cause. The ticket in itself cannot amount to a contract: there must be an assent by both parties to constitute a valid contract; and here it must be taken that the plaintiff never had his attention called to the words printed on the back of the ticket, and that he never read them. *Henderson* v. *Stevenson* (4) is precisely in point. There, a ticket having on its face only the words "Dublin and Whitehaven" was given to a passenger, who, without looking at it, paid for it and went on board. In an action by the passenger against the steam-packet company for the loss of his luggage, it was held to be no defence on the part of the company that on the back of the ticket there was an intimation that they were not to be liable for losses of any kind or from any cause. The language of Cairns, L.C., and of all the learned lords who delivered judgments in that case is conclusive in favour of the plaintiff here.

[LORD COLERIDGE, C.J. There was no reference on the face of the ticket there to the conditions printed on the back of it. It must be matter of evidence in each case.]

In *Van Toll* v. *South Eastern Ry. Co.* (1), the Court were to draw such inferences from the facts as a jury might have done, and the inference they drew was that the plaintiff knew of the special terms on which the bag was deposited, and assented to be bound by them. The same remark applies to *Stewart* v. *North*

(1) 12 C. B. (N.S.) 75; 31 L. J. (C.P.) 241.

(2) Law Rep. 4 Ex. 58, 60.

(3) 3 H. & C. 135; 33 L. J. (Ex.) 199.

(4) Law Rep. 2 H. L., Sc. 470.

Western Ry. Co. (1); and *Zunz* v. *South Eastern Ry. Co.* (2) is disposed of by the observations of Lord Chelmsford in *Henderson* v. *Stevenson.* (3)

[LORD COLERIDGE, C.J. Pollock, C.B., puts it thus in *Stewart* v. *North Western Ry. Co.* (4): "As to the finding of the jury that the plaintiff was not aware of the contents of the time-bills, the rule applies, that a person must be presumed to know what he has the means of knowing, whether he avails himself of those means or not." If that is to be taken to be a proposition of law, it is distinctly overruled by the judgment in the House of Lords. It may be that it is a matter which may be fairly pressed before a jury.]

Willis and *Bremner*, in support of the order. *Henderson* v. *Stevenson* (5) does not decide this case. It may well be that that which is at the back of the document and is not seen is not part of the contract. But it is otherwise where there is on the face of the document given to the party a distinct reference to conditions printed on the back of it. In *Van Toll* v. *South Eastern Ry. Co.* (6) the facts were as nearly as possible the same as the facts here, and the form of the ticket was the same. Byles, J., says (7): "Suppose, instead of a notice limiting the liability of the bailees, this had been a notice to quit, or a notice of the dishonour of a bill, or a notice of objection to a vote for a county or borough, it would be a strong thing to say that a man might put such a notice into his pocket, and say he never read it." "Where a notice of this kind is given, it seems to me there may be two sorts of assents. One is, where the terms are read by the bailor, and then he puts the document into his pocket, and so assents to it expressly. But if, without reading it, he chooses to put it into his pocket, though he does not know one word it contains, it seems to me that he assents to it implicitly, whatever the terms may be, on two conditions. One of those conditions is, that the terms contained in the notice should be reasonable."

[LORD COLERIDGE, C.J. Nobody seems to have asked the

(1) 3 H. & C. 135; 33 L. J. (Ex.) 199.
(2) Law Rep. 4 Q. B. 539.
(3) Law Rep. 2 H. L., Sc. 470, 477.
(4) 3 H. & C. 135, 138; 33 L. J. (Ex.) 199.
(5) Law Rep. 2 H. L., Sc. 470.
(6) 12 C. B. (N.S.) 75; 31 L. J. (C.P.) 241.
(7) 12 C. B. (N.S.) at p. 87.

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plaintiff whether she had read the notice or not. The Lord Chief Justice, however, seems to have assumed that she had.]

The cases of *York, Newcastle, and Berwick Ry. Co.* v. *Crisp* (1) and *Van Toll* v. *South Eastern Ry. Co.* (2) were cited in *Lewis* v. *M'Kee* (3), and Willes, J., delivering the judgment of the Exchequer Chamber, expressly says that the Court threw no doubt on the principles acted upon in those cases,—observing that, "in those cases, as part of the contract, and as expressing or intended to express the terms on which the parties were dealing, a written document was handed from the one to the other under circumstances in which, without negligence, the person receiving it could not be unaware of what the person delivering it meant to bind himself to." The true question for the jury, after the first, was, whether the plaintiff knew or had the means of knowing that the company were receiving the bag upon some special printed terms. If they found that affirmatively, they should have been directed to find for the defendants, on the ground that the plaintiff had assented to those terms without reading them, or that there was mutual error, and that the plaintiff's claim as a simple bailor was not made out.

[LORD COLERIDGE, C.J. The plaintiff did not know that the terms upon which the company received his property were those printed on the back of the ticket. The jury have so found, and also that he was not negligent in not knowing it.]

They should have been asked whether he knew that there were special terms. [*Kerr* v. *Willan* (4) and *Rowley* v. *Horne* (5) were also cited. (6)]

LORD COLERIDGE, C.J. In this case the plaintiff sues the South Eastern Railway Company for damages for the loss of a portion of his luggage, he having been a passenger by their railway. The article in question (a travelling-bag) had been delivered to the company at the cloak-room of their station at Charing Cross, and

(1) 14 C. B. 527; 23 L. J. (C.P.) 125.

(2) 12 C. B. (N.S.) 75; 31 L. J. (C.P.) 241.

(3) Law Rep. 4 Ex. 58, 61.

(4) 6 M. & S. 150.

(5) 3 Bing. 2.

(6) At the close of his argument, *Willis* stated that a similar question was pending in the Queen's Bench Division, and that time had been taken for consideration. *Harris* v. *Great Western Ry. Co.*, 1 Q. B. D. 515.

2*d.* had been paid upon its being so deposited, and a ticket given to the plaintiff which upon the face of it purported to be an acknowledgment that the company had received the article. At the bottom of this ticket were printed the words "See back," and, when the back is looked at, certain conditions are found printed thereon, one of which is, "The company will not be responsible for any package exceeding the value of 10*l.*" It was admitted that the bag in question did exceed the value of 10*l.* At the trial before Pollock, B., the plaintiff swore that, when he received the ticket, he put it into his pocket and did not read it, considering it to be a mere memorandum or receipt for the money paid, and that he did not see any placard hung up in the cloak-room. He added that, having threatened to take proceedings against the company, his attention was for the first time called to the indorsement on the ticket. The learned Baron put two questions to the jury, viz. 1. Did the plaintiff read or was he aware of the special conditions upon which the articles were deposited? 2. Was the plaintiff, under the circumstances, under any obligation, in the exercise of reasonable and proper caution, to read or to make himself acquainted with the conditions? The jury answered both these questions in the negative. The question is whether, upon these facts and findings the defendants are responsible for the loss of the plaintiff's bag. I am of opinion that they are.

The question turns upon certain elementary propositions of the law of contract, qualified by some decisions. It seems to me to be impossible to say that there is no contract, supposing the fact to be that the condition printed on the back of the ticket was not brought home to one of the contracting parties. The facts which are relied on as evidence of a contract are these:—The plaintiff hands in a bag to a servant of the company at a place called the cloak-room, and pays 2*d.*, receiving in return a paper. It is impossible to say that, because there are on the back of that paper conditions which the company intend to form the basis of a contract, but which are not brought to the knowledge of the plaintiff, therefore there is no contract. The contract is the ordinary contract of bailment; and the company are bound to take care of the article intrusted to them. But it is said that,

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though there may be such a contract in the case supposed, at any rate that is not so here, because the company all along contracted to be liable only upon certain terms of which this is not one. It is further said that the circumstances were such that no one could without being guilty of negligence be unaware of the contents of the document given out as forming the basis of the contract, and that, as the plaintiff chose, without taking reasonable care to see what was on the paper, to leave the bag, he must be assumed to have assented to be bound by conditions which were fairly brought to his knowledge, and that the company have therefore a right to rely on those conditions as forming part of the contract.

Now, it seems to me to be impossible, in common sense or upon the authority of any of the cases, to lay down any definite and fixed line with regard to which it can be said that a railway company are bound or not bound by such a document as this. It must in each case be a question of evidence and common sense. There are cases, no doubt, where, when a document has been handed to a man, he must be taken to have acquainted himself with its terms, and, if he has not in fact done so, it is his own fault, and he is bound by them. Take the case of a sale of land: a document is handed to the intending purchaser which contains the conditions of sale. Having had an opportunity of doing so, it must be assumed as against him that he has read the conditions, and assented to deal with reference to them. Can it be said that that is the case with a document like this? In every case of this kind it must be matter of evidence whether or not the conditions were so brought to the knowledge of the party sought to be bound as to satisfy a jury that those were the terms upon which both were contracting. That is the principle upon which the House of Lords decided the recent case of *Henderson* v. *Stevenson*. (1) That case is on all fours with the present, with this exception, viz. that there the conditions were printed on the back of the ticket, without any reference to it on the face of the document; whereas here the ticket had on its face the words "See back." I do not, however, find that the reasoning of the law Lords in giving judgment in that case is

(1) Law Rep. 2 H. L., Sc. at p. 470.

satisfied by placing it on that distinction. The Lord Chancellor, it is true, after pointing out the particular condition at the back of the document, goes on to say: "With regard to the knowledge of the respondent of what was printed upon the back of the ticket, your Lordships have his own evidence, which is not controverted, and upon which he does not appear to have been challenged or cross-examined, that in point of fact he did not read and did not know what was printed upon the back of the ticket,"—words which seem to have been present to the mind of my Brother Pollock when he put the first question to the jury—"*There was nothing upon the face of the ticket referring him to the back, and there was nothing said by the clerk who issued the ticket directing the respondent's attention to what was printed upon the back.* Your Lordships therefore may take it as a matter of fact that the respondent was not aware of that which was printed upon the back of the ticket; consequently, so far as any intelligent knowledge of what was there printed is concerned, he cannot be taken intelligently to have agreed to the terms printed upon the back of the ticket." I understand his Lordship to mean that the evidence satisfied him that the terms by which the company intended the respondent to be bound were not brought to his notice: the absence of reference on the face of the ticket to the conditions on the back, and the absence of a reference to those conditions when the ticket was taken, were circumstances which induced him to come to the conclusion that the conditions were not brought to the notice of the passenger; but I cannot find that he anywhere says that, if those words of reference had been on the face of the ticket, he would have come to a different conclusion. His Lordship goes on to say (1) that he entirely agrees with the observation of the Lord Ordinary, that, "in a case like this, mere notice, not brought home to and assented to by the pursuer, is not enough." And he proceeds: "The question does not, as it seems to me, depend upon any technicality of law or upon any careful examination of decided cases. It is a question simply of common sense. Can it be held that, when a person is entering into a contract containing terms which de facto he does not know, and as to which he has received no notice, that he ought to inform himself upon

(1) Law Rep. 2 H. L., Sc. at p. 475.

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them? It appears to me to be impossible that that can be held." From this I infer that, in his Lordship's opinion, if a notice was given, but not brought home to the plaintiff, that would not be enough. I find nothing in any of the other judgments to diminish the force of those observations. Lord Chelmsford (1) and Lord Hatherley (2) both hold similar language: and Lord O'Hagan says (3): "Proof of the respondent's knowledge and assent might have been given in various ways. In certain circumstances, denial of them might not be permissible; in others, a jury or a Court might be satisfied of their existence from antecedent dealings, notoriety of custom, publication of notices, verbal communications, and so forth; but I agree with the Lord Chancellor that the mere receipt of a ticket, under such circumstances, and with such an indorsement as we have before us, is not shewn by the authorities cited at the Bar to furnish per se sufficient evidence of such assent or knowledge."

Regard being had to the common and ordinary course of business, it seems to me to be reasonable that a man receiving such a ticket as this should look upon it as a mere voucher for the receipt of the package deposited, and a means of identifying him as the owner when he sought to reclaim it: and I think the jury were quite right in finding that the plaintiff in this case did not read the special condition, nor was he, under the circumstances, under any obligation to read it.

It is said that there are cases which were not cited upon the argument of *Henderson* v. *Stevenson* (4) in the House of Lords, where the Courts had come to a different conclusion. There are, no doubt, cases where a different conclusion in point of fact has been arrived at. In *York, Newcastle, and Berwick Ry. Co.* v. *Crisp* (5) and *Van Toll* v. *South Eastern Ry. Co.* (6), under the circumstances there appearing, this Court held the companies to be exempt from liability, and the plaintiffs to be fixed with notice of the special terms of the contract, because there was evidence that they knew of facts from which they must be taken to have

(1) Law Rep. 2 H. L., Sc. at p. 476.
(2) Law Rep. 2 H. L., Sc. at p. 478.
(3) Law Rep. 2 H. L., Sc. at p. 480, 481.
(4) Law Rep. 2 H. L., Sc. 470.
(5) 14 C. B. 527; 23 L. J. (C.P.) 125.
(6) 12 C. B. (N.S.) 75; 31 L. J. (C.P.) 241.

known what those special terms were. But in these and in numerous similar cases it was treated as a question whether upon the facts proved the jury could find or the Court infer that the limitation of the contract relied on by the railway company was brought home to the knowledge of the defendant as a term of the contract. I find these cases thus summarized by Willes, J., in *Lewis* v. *M'Kee* (1): "In those cases, as part of the contract, and as expressing or intended to express the terms on which the parties were dealing, a written contract was handed from the one to the other under circumstances in which, without negligence, the person receiving it could not be unaware of what the person delivering it meant to bind himself to." It is, therefore, upon the circumstances of those cases and the findings of the jury upon the facts that that learned judge relies as distinguishing them from the case before him. In the present case it is found that the plaintiff was unaware of the conditions printed on the back of the ticket, and that he was so unaware without any negligence on his part: therefore, upon the two grounds upon which Willes, J., relies in dealing with those cases, I think this case is distinguished by the findings of the jury. I accept those decisions upon the ground stated by that learned judge. "If," he says (2) "one person seeks to impose on another a liability by contract, but chooses to abstain from reading the terms of the document in which the liability is sought to be expressed, he is in this dilemma: either he has chosen to accept the terms without taking the trouble of informing himself what they are; or if not reading, he did not assent to the terms proposed, then no action lies, because one side has intended one thing, and the other a different thing, and the transaction is vitiated by mutual error. The first of these alternatives is probably the practical conclusion at which a jury would arrive." It seems to me that the cases which have been relied on as distinguishable from and as not governed by *Henderson* v. *Stevenson* (3), and as governing this case, are, when looked at, in accordance with the decision in that case, and distinguishable from this. It seems to me that no sound distinction can be taken between a condition on the face of the ticket and

(1) Law Rep. 4 Ex. 58, 61. (2) Law Rep. 4 Ex. at p. 61.
(3) Law Rep. 2 H. L., Sc. 470.

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one printed on the back of it. In each case the question must equally be one of circumstances and construction,—was the plaintiff unaware of the condition upon which the company consented to accept his deposit, and, if he was, was it through his own culpable negligence that he was ignorant of it? If he was unaware of it without any negligence on his part, he cannot be bound by it. The jury in this case have found that the plaintiff was unaware of the condition, and that he was guilty of no negligence. It seems to me that the proper questions were left to the jury, and that their findings were warranted by the evidence. The case is really within the doctrine upon which the learned law Lords proceeded in *Henderson* v. *Stevenson*. (1) I therefore think the rule must be discharged.

BRETT, J. The plaintiff took to the cloak-room at the defendants' station a portmanteau and a bag, and gave them to the servants of the defendants to keep them safely and to restore them to him on demand, and he paid for each 2*d*. for that service. Upon his so depositing his property and making that payment, the porter handed him a ticket. Upon the face of that ticket there was nothing to modify the ordinary bailment except the words "See back." It turned out that on the back of the ticket there were certain conditions, amongst others one which provided that "the company will not be responsible for any package exceeding the value of 10*l*." The bag, the value of which considerably exceeded 10*l*., was lost. Under these circumstances, the plaintiff brings his action against the company for the non-return of the bag, founding his claim upon the ordinary contract of bailment where the service is to be paid for. The answer set up by the defendants is, that the contract they entered into was not the ordinary contract of bailment, but a special contract, with a special limitation of the ordinary contract. This is not a case in which the terms of the contract need be in writing. It is a case in which, if no document at all passed between the parties, there would be a contract implied from the handing over the article and payment of the money, viz. the ordinary contract of bailment; and it is contended on the part of the plaintiff, that, unless it can

(1) Law Rep. 2 H. L., Sc. 470.

be shewn that his attention was called at the time of the delivery of the ticket to him to the limitations printed on the back thereof, he is not bound by them, but is at liberty to assume that the contract upon which he deposited his property was the ordinary contract of bailment. Now, it is not found or suggested that the plaintiff's attention was called to the conditions indorsed upon the ticket. The jury found that the defendant did not read nor was he aware of the special conditions upon which the articles were deposited,—that is, that he neither saw nor read the indorsement or the placard. They further found that the circumstances under which the ticket was handed to him were such that the plaintiff was not guilty of any want of proper caution in failing to make himself acquainted with the supposed conditions.

The contention on the part of the defendants is, that if, in making such a contract, that is, a contract of bailment, a document passes between the contracting parties, it is the duty of the person who receives it to read it; that, if there is nothing on the face of it to limit the ordinary liability of the bailee, the bailor may properly say that he is only bound by what he finds there; but that, if there is a reference on the face of it to something written or printed at the back, he is bound to look at the back of the document, and it is to be presumed as against him that he did so. The defendants raise that argument upon an order to enter judgment for them, on the ground that, upon the facts admitted, the learned judge ought to have entered judgment for them; that is, that, assuming the findings of the jury to be correct, the plaintiff ought to have read the conditions on the back of the ticket, and is bound by them as if he had read them. They also ask for a new trial on the ground of misdirection, which involves the same point.

As I have already intimated, in cases where the contract must be in writing, the party contracting is bound to read it, and must be assumed to have done so. But, where the contract arises only by implication from the facts, and no document in writing is necessary, or where the document may or may not contain terms of limitation, I am aware of no case which decides, as matter of law, that the person to whom it is handed is obliged to make him-

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self acquainted with its terms, and is bound by them as if he had done so. If the jury find that he did read the document, or that the circumstances were such that in the ordinary course of business it might fairly be assumed that he had read it, then of course he would be bound by it, But I apprehend it is open to the jury to say that he may have taken the document as one which would contain nothing to call for special attention. They might well say that people would naturally take a ticket of this sort as a mere voucher to be produced on demanding back the article deposited, and are not bound to expect it to contain any special limitation of the contract upon which the deposit was made, and so the omission to read it was not an act of culpable negligence. It may be that, if the defendants could shew that the plaintiff here had read the face of the ticket, a jury would be warranted in saying he was guilty of negligence in not accepting the invitation to look at the back of it. The case of *Henderson* v. *Stevenson* (1) has been relied on as shewing that the recipient of a ticket is bound to read the face of it, but that, if there be no reference thereon to the back, he is not guilty of negligence in omitting to read that which is on the back. But that case, as I read it, goes much further. It came before the House of Lords upon an appeal from a Scotch Court upon a state of facts which shewed that the pursuer was guilty of no negligence in not reading what appeared on the back of the ticket which he received in exchange for the passage-money. It is true that there the face of the ticket had on it no reference to the back: but the Lord Chancellor treats the question as one of evidence and common sense; and his expressions go the full length of holding the same rule to apply to the front as to the back of the document, viz. that, in the absence of evidence to shew that the attention of the party is called to the alleged limitation of the ordinary contract of bailment, such limitation cannot be implied from the mere delivery of the ticket. I think that case is conclusive to shew, that, as matter of law, there is no obligation on the party, under circumstances like these, to look either at the face or at the back of the ticket. *Lewis* v. *M'Kee* (2) has been relied upon as in favour of the defendants' view: but I must confess it seems to me

(1) Law Rep. 2 H. L., Sc. 470. (2) Law Rep. 4 Ex. 58.

to be strongly in the plaintiff's favour. There, goods were shipped under a bill of lading in the usual terms. The consignee of the bill of lading, being sued for the freight, pleaded that, before the time had arrived for the delivery of the cargo, he indorsed the bill of lading in these words "Deliver to W. & K. or order, looking to them for all freight, dead freight, and demurrage, without recourse to us," and that the plaintiffs accepted the indorsement, and in pursuance of it delivered the goods to W. & K., and not to the defendant. At the trial it was admitted that the defendant would have been liable to W. & K. for any freight paid by them. There was a conflict of evidence as to whether the indorsement was or was not on the bill when it was shewn to the captain, but the captain swore he did not see it. Martin, B., directed the jury that it was immaterial whether the indorsement was or was not on the bill unless the captain saw it, and that the onus lay on the defendant of proving that the captain saw and assented to it. A verdict having been found for the plaintiffs, the Court of Exchequer discharged a rule for a new trial on the ground of misdirection, and that ruling was affirmed by the Court of Error, where it was held that, the defendant having been at the time of the alleged indorsement liable for the freight, and admitting that he was still substantially liable, he was bound to prove an assent on the part of the plaintiffs discharging him from that liability, and that assent would not be proved by shewing that the indorsement was on the bill when it was presented to the captain, without proving that the captain in fact assented to it. Willes, J., in delivering the judgment of the Court, distinguishes the case in hand from *York, Newcastle, and Berwick Ry. Co.* v. *Crisp* (1), and *Van Toll* v. *South Eastern Ry. Co.* (2)

As to *Van Toll* v. *South Eastern Ry. Co.* (2) and the other cases relied on for the defendants, they are distinguishable, on the ground that the Court, having power to draw inferences, drew the inference that, on the facts proved or admitted, there had been no negligence; whereas here, as in *Henderson* v. *Stevenson* (3), the Court is not at liberty to draw inferences, the question of negli-

(1) 14 C. B. 527; 23 L. J. (C.P.) 125.

(2) 12 C. B. (N.S.) 75; 31 L. J. (C.P.) 241.

(3) Law Rep. 2 H. L., Sc. 470.

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PARKER v. SOUTH EASTERN RAILWAY CO.

gence having been left to the jury, and they having negatived negligence.

We have been asked to suspend our judgment in this case, because it is said that there is a similar case pending in the Queen's Bench Division, in which the Court has taken time to consider its judgment. If I had thought that the circumstances of that case were really the same as those of the present case, I should have felt inclined for my part to reserve my opinion: but I do not find that they are so. That case was tried before Baron Pollock (the same learned judge who tried this case) without a jury, and he reserved the question for the Court, giving them full power to draw inferences of fact. (1) But here, unless we find that there has been a misdirection, or that upon the facts proved the judgment ought to have been entered for the defendants notwithstanding the findings of the jury,—there being no motion for a new trial on the ground that the verdict was against the weight of evidence,—we are bound by the finding of the jury that the plaintiff was guilty of no negligence or want of reasonable care in abstaining from looking at the ticket.

Upon the whole, therefore, I think, in obedience to the decision of this Court in *Van Toll* v. *South Eastern Ry. Co.* (2) and of the House of Lords in *Henderson* v. *Stevenson* (3), we are bound to discharge this order.

LINDLEY, J. I am of the same opinion. The contract, if any, was the ordinary contract of bailment, or the special contract to be found on the back of the ticket. The jury having negatived the latter, it follows that the contract was the ordinary contract of bailment. It has been urged that there is no contract at all, because, assuming that the plaintiff did not look and was not bound to look at the special conditions indorsed on the ticket, the parties were not at one. But, on the finding of the jury, I think we cannot say that the defendants did not accept the article, to be taken care of by them, without any special terms. *Henderson* v. *Stevenson* (3), therefore, is undistinguishable from this case, except

(1) *Harris* v. *Great Western Ry. Co.*, 1 Q. B. D. 515.

(2) 12 C. B. (N.S.) 75; 31 L. J. (C.P.) 241.

(3) Law Rep. 2 H. L., Sc. 470.

for the words "see back," which did not appear on the face of the ticket in that case. But the findings here make that distinction immaterial. After the conclusions of fact which the jury have drawn, it is, upon the authority of that case, quite immaterial whether the special terms relied on were on the front or on the back of the ticket.

Order discharged.

Solicitor for plaintiff: *G. W. Digby.*
Solicitor for defendants: *W. R. Stevens.*

BRIDGE *v.* BRANCH.

May 20.

Mayor's Court of London Procedure Act, 1857 (20 & 21 *Vict. c. clvii*), *s.* 48—*Setting aside a Judgment removed into a Superior Court—Want of Jurisdiction—Prohibition—Motion by Defendant.*

Sect. 48 of the Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. clvii), enacts that a judgment removed from that court to a superior Court shall have the same force and effect as a judgment recovered in the superior Court:—

Held, that it is competent to the Court to which such judgment is so removed to set it aside, if satisfied that it was obtained in a matter over which the inferior court had no jurisdiction.

A prohibition may be moved for by the defendant himself, where the Court is satisfied that the inferior court is proceeding without jurisdiction.

Baker v. *Clark* (Law Rep. 8 C. P. 121) explained.

A JUDGMENT having been obtained against the defendant in the Mayor's Court, London, and removed into this Court pursuant to s. 48 of the Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. clvii (1),

(1) Which enacts that, "In every case where final judgment shall have been obtained in the Mayor's Court, and also in every case where any rule or order shall have been made by the court whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, any writ of execution upon such judgment, or any rule or order so made by the court, shall be sealed by the sealer of the writs of any of the superior Courts, upon a præcipe of the same being lodged with him, together with an affidavit verifying the judgment or order, and that the same remains unreversed and unsatisfied; and immediately thereupon such writ of execution and such judgment, rule, or order shall become and be of the same force, charge, and effect as a writ of execution or judgment recovered in or a rule or order made by such superior Court, and all the reasonable costs and charges atten-