

Case No. 5,026. FRALOFF V. NEW YORK CENT. & H. R. R. CO.

[12 Blatchf. 484;¹48 How. Pr. 535; 21 Int. Rev. Rec. 124.]

Circuit Court, S. D. New York.

April 1, 1875.²

CARRIERS OF PASSENGERS—LOSS OF BAGGAGE—VALUABLE LACES—REASONABLE AND ORDINARY WEARING APPAREL.

1. On the trial of a suit against a railroad corporation, to recover the value of certain laces, forming part of the contents of a trunk, which the corporation transported as the baggage of a passenger, who went by the same train with the trunk, the jury were instructed, that they were to decide, as a question of fact, under the rules defined by the court, whether or not the laces in question were baggage; that the responsibility of a carrier could not be maintained to the extent of making him responsible for such unusual articles as the exceptional habits or fancies, or the idiosyncrasies, of some particular individual, might prompt that individual to carry; that liability was limited to responsibility for such articles as it was customary or reasonable for travelers of the same class or tastes, in general to take with them for such journeys as the one which was the subject of inquiry; and that they could find a portion of the laces to have been reasonable baggage and the remainder not. The jury found a verdict for the plaintiff for \$10,000. A motion was made by the defendants for a new trial, on the ground that the verdict was contrary to the evidence: *Held*, that, as the jury must have found that the laces, to the value of \$10,000, were baggage, and, as their verdict was sustained by credible testimony as to such value, it was conclusive.

[See note at end of case.]

2. Whether the laces in question were the wearing apparel of the plaintiff, and were reasonable and ordinary wearing apparel to be carried by her as baggage, was a question of fact for the jury.

[See note at end of case.]

[This was an action at law by Olga De Maluta Fraloff against the New York Central & Hudson River Railroad Company to recover the value of certain laces alleged to have been abstracted from the baggage belonging to the plaintiff while in course of transportation over the defendant's road. At the first trial the jury were unable to agree, and were discharged. Case No. 5,025.]

James W. Gerard, for plaintiff.

Elliott F. Shepard, for defendant

WALLACE, District Judge. This is a motion, upon a case made, for a new trial. The action is by a passenger, to recover for baggage lost while in charge of the defendant. The jury rendered a verdict for the plaintiff, for \$10,000.

The facts upon which the verdict of the jury is predicated are so unusual, and the amount of the recovery, in view of the nature of the action, is so exceptional, that this motion deserves and has received careful consideration; but, notwithstanding the very elaborate and able argument of the defendant's counsel, and my own inclination to dissent from the conclusions of the jury, upon one of the vital questions of fact, I am convinced

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that the case presented is not within the rules which authorize a verdict to be set aside as contrary to evidence.

Credible testimony was given which authorized the jury to find the following facts: The plaintiff was a Russian lady, of high rank and large estates, who, for some time prior to coming to the United States, had been traveling in Europe, spending her time mainly in its principal capitals. Partly for health and partly for pleasure, in September, 1869, she determined to visit the United States, and left England, under the escort of one Webber, as a traveling companion, and came to New York City. While in England, her baggage comprised twelve trunks. Of them she brought here four large and the small ones, containing wearing apparel for her own use, of great variety and quantity, and of very expensive quality. Included in her wearing apparel was a large quantity of rare and valuable laces, which she had been accustomed to wear occasionally at home and during her travels in Europe, and which she valued at \$200,000. She contemplated extensive travels in this country, and brought with her about \$15,000, for her expenses, but had no fixed plans as to the duration or details of

her travels. After staying several weeks in New York City, she commenced her travels here, and started for Chicago, intending to visit various places on the way, designing not to return to New York, but to decide, after arriving at Chicago, where she would go, contemplating, in a general way, going to New Orleans, Havana, California, and, possibly, Rio Janeiro, or to some of those places. She carried with her, from New York, one large trunk, a small trunk, a hat box, four satchels, a bag containing jewelry, and a cage of birds. She took with her the laces in question, which were packed in the large trunk. This contained several trays, the laces being in the fifth one from the top. Webber accompanied her. They stopped at the Delavan House, in Albany, for a day or two, and the large trunk was allowed to remain, during that time, in the baggage room of the hotel, locked up with other baggage. Webber went to the trunk once or twice, by the plaintiff's request, and procured from it articles which she wanted. Just before it was taken from the hotel to the defendant's depot, by the hotel porter, Webber returned these articles to the trunk. He then saw the package in which the laces had been folded by the plaintiff when she packed her trunks. He locked the trunk, and, soon after, it was delivered by the porter to the defendant's baggage agent, and was checked for Niagara Falls, whither the plaintiff and Webber went by the same train as did the baggage. The trunk was in good condition when delivered to the defendant's agent. When it arrived at Niagara Falls, the locks were broken, the contents disturbed, and the plaintiff refused to receive it until it was examined to ascertain if the contents were safe. Upon examination, it appeared that the laces were missing, although nothing else had been taken. Articles of great value were necessarily exposed to view before the laces could have been abstracted from the trunk. As to the value of the laces, the jury were authorized to find a verdict for a very small sum, or for \$62,000. Some of the laces were collars and handkerchiefs, and others were flounces, corsages, and dress trimmings, of various kinds. Although a large amount of testimony was elicited on the part of the defendant, tending to contradict many of these facts, and, upon some of them, strongly discrediting the plaintiff's case, I am constrained to hold that there was sufficient evidence to authorize the jury to find them substantially as above stated.

Among other things the jury were instructed, that they were to decide, as a question of fact, under the rules defined by the court, whether or not the laces in question were baggage, and, in this connection, the court charged as follows: "The responsibility of a carrier cannot be maintained to the extent of making him responsible for such unusual articles as the exceptional habits or fancies, or the idiosyncrasies, of some particular individual, may prompt that individual to carry. That liability is limited to responsibility for such articles as it is customary or reasonable for travellers of the same class or tastes, in general to take with them for such journeys as the one which is the subject of inquiry." They were also

instructed that they could find a portion of the laces to have been reasonable baggage, and the remainder not.

I have summarized these facts, and referred to the instructions mentioned, for the purpose of presenting satisfactorily the salient features of the case in regard to the question which has impressed me as the most serious one—whether the jury could properly find that the property for which the plaintiff has obtained a verdict was reasonable and ordinary baggage.

The jury must have found that laces of the value of \$10,000, carried by a traveller, with a large assortment of other articles of apparel, for personal use, are reasonable and ordinary baggage, for the loss of which a carrier, to whom they have been delivered, without notice of their value, is responsible. On first impression, the statement of this conclusion raises a somewhat violent presumption against the correctness of the verdict. No precedent for a recovery so large has been found, and, if it is sustained, it is difficult to ascertain where the limit of a carrier's liability exists. Nevertheless, if the question was properly left to the jury to decide, as one of fact, the value of the articles was peculiarly for their consideration, and abundant testimony was before them to sustain the conclusion they reached. The difficulty, in this case, lies in the character of the articles for the loss of which the action was brought. They were claimed to be a portion of the plaintiff's wearing apparel. If they were such, within all the eases, they were baggage, unless they were so valuable and rare as to exclude them from that category. What is wearing apparel, must necessarily be a question of fact. What is reasonable and customary wearing apparel, to be carried by a traveller upon a particular journey, must, also, be a question of fact. I know of no case where this has been held to be a question of law. The conflict in the authorities arises when we pass beyond these articles, to inquire what other property is baggage. By some of these authorities it is held, that the broad question is one for the jury to determine, both as to character and value, depending upon the tastes and habits of the traveller, his pecuniary circumstances, his position in society, and the conveniences and necessities of the particular journey, and that their decision cannot be disturbed (*Rawson v. Pennsylvania R. Co.*, 2 Abb. Pr. (N. S.) 220; *McGill v. Rowand*, 3 Barr [3 Pa. St] 451); while, by others, it is held to be one of law for the court; and in these we find an irreconcilable conflict in its determination. Thus, money for travelling expenses

has been excluded (*Grant v. Newton*, 1 E. D. Smith, 95), and allowed (*Merrill v. Grinnell*, 30 N. Y. 594); jewelry excluded (*Richards v. Westcott*, 2 Bosw. 589, and *The Ionic* [Case No. 7,059]), and allowed (*Mc-Cormick v. Hudson River R. Co.*, 4 E. D. Smith, 181); pistols excluded (*Chicago, R. I. & P. R. Co. v. Collins*, 56 Ill. 212), and guns allowed (*Van Horn v. Kermit*, 4 E. D. Smith, 453); manuscripts excluded (*Hannibal Railroad v. Swift*, 12 Wall [79 U. S.] 262), and allowed (*Hopkins v. Westcott* [Case No. 6,692]). An examination of these cases justifies the remark, that the limit of the carrier's responsibility seems as uncertain when left to be ascertained as a question of law by the court, as when left to the inquiry of a jury. Holding, as I do, that, whenever the article in controversy is, or may be, wearing apparel, a question arises for the determination of the jury as to whether, upon the facts in the particular case, it was such as the traveller was entitled to carry as baggage, it follows, that the finding of the jury, when sustained by credible testimony, must be conclusive. If the court can set aside the verdict, because it appears that the property was of greater value than the judge deems it reasonable that a traveller should carry, the question is no longer one of fact for the jury, but one of law for the court. If it is to be decided as matter of law, what standard of value is to be adopted? Illustrated by the present case, when the jury have found that the value of the plaintiff's property was \$10,000, or that such of it as, under the circumstances, she was entitled to carry, was of that value, is it to be said it must be set aside, whereas, if it had been \$1,000, or \$3,000, the law would sanction the recovery? If so, it is the duty of the court, instead of instructing the jury that they are to determine what, in the particular case, is reasonable and customary baggage, to instruct them that the value or amount must not exceed some arbitrary limit defined by the court. To this proposition I cannot assent. If carried to its logical conclusion, it would abrogate the functions of the jury with reference to questions of this class. On the other hand, if the views I have expressed are a correct exposition of the law, the carrier is exposed to the hazard of most onerous responsibilities. In this case, the verdict might have been for \$62,000, and it could not have been said that the verdict was contrary to the evidence, as to the value of the property lost. It would be difficult to conceive that any facts would justify such a recovery for loss of baggage. Undoubtedly, the case would be rare where such a verdict would not indicate prejudice, partiality or misconception on the part of the jury; and, in such case, under its general power over verdicts, the court could set it aside. But, had it been for that sum here, I am not prepared to say that it could not be sustained, in view of the extraordinary features of the case. As is said by the supreme court of Pennsylvania, in *McGill v. Rowand*, supra, it is not obvious in what manner the court can restrict the quantity or value of the articles that may be deemed either proper or useful for the ordinary purposes of the traveller, because, in the nature of things, it is susceptible of no precise or definite rule, and, when there is an attempt to abuse the privilege, the court must rely upon the intelligence and integrity of

the jury, to apply a corrective. If carriers are unwilling to assume the liabilities which they may incur if this rule is adopted by the courts, they must resort to such regulations, in regard to the transportation of baggage, as are sanctioned by law, or appeal to legislation for protection.

I have not deemed it necessary to refer to any other of the many grounds upon which it is urged a new trial should be granted. I entertain no doubt that, upon the other questions of fact, there was sufficient evidence to justify the conclusions of the jury. As to the rulings of the court upon the trial, those of importance were quite maturely considered, and, upon examination, meet my approval now. The novelty and importance of the questions involved render the case one eminently fit for the consideration of a higher tribunal, and to its consideration these questions should be remitted.

The motion for a new trial is, accordingly, denied.

[NOTE. The defendant brought error, and the judgment of the circuit court was affirmed; Mr. Justice Harlan delivering the opinion, in which it was held: "1. In absence of legislation, or of special regulations by the carrier, or of conduct by the passenger misleading the carrier as to value of baggage, the failure of the passenger, unasked, to disclose the value of his baggage is not, in itself, a fraud upon the carrier. 2. To the extent that articles, carried by a passenger for his personal use when travelling, exceed in quantity and value such as are ordinarily or usually carried by passengers of like station and pursuing like journeys, they are not baggage for which the carrier, by general law, is responsible as insurer. 3. Whether a passenger has carried such an excess of baggage is not a pure question of law for the sole or final determination of the court, but a question of fact for the jury, under proper guidance as to the law of the case. And its determination of the facts—no error of law appearing—is not subject to re-examination in this court." Mr. Justice Field, Mr. Justice Miller, and Mr. Justice Strong dissent. New York Cent. & H. R. R. Co. v. Fraloff, 100 U. S. 24.]

¹ [Reported by Hon. Samuel Blatchford. District Judge, and here reprinted by permission.]

² [Affirmed in 100 U. S. 24.]