

Case No. 8,567.

LOWE V. STOCKTON ET AL.

[4 Cranch, C. C. 537.]<sup>1</sup>

Circuit Court, District of Columbia.

March Term, 1835.

NEGLIGENCE—STAGE OWNERS—CARRYING OFF SLAVES—CUSTOMARY DILIGENCE.

The owners of a stage coach are liable for the negligence of their agent in suffering the plaintiff's slaves to be taken away in their coach; but not if the agent has used all the diligence which is customary and usual in similar cases.

This was an action upon the case for permitting the plaintiff's slaves to be carried away in the defendant's stage-coach. The slaves were colored persons. A decent, respectable looking white woman, who gave her name as Powell, came to the stage-coach office of the defendants [Stockton & Stokes] in the morning of that day, or the day before, and told the office-keeper that she wished to take seats for two of her servants, and that they would be there at the time of the departure of the evening stage-coach, and she paid for their passage. The servants came at the time and said they were the persons for whom Mrs. Powell had paid the passage; and they were permitted to take their seats.

THE COURT, at the prayer of Mr. Key, for plaintiff [Elizabeth Lowe], instructed the jury, as in *Mandeville v. Cookenderfer* [Case No. 9,009], at December term, 1827, that if they believe, from the evidence, that the slaves of the plaintiff were taken away, without her consent, in the stagecoach of the defendants, and that the agent of the defendants, by using due and reasonable

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diligence, could have prevented their being so taken away, and that the said agent did not use such due and reasonable diligence, then the defendants are liable.

And, at the prayer of Mr. Coxe, for defendants, further instructed them, that if they should believe from the evidence that the defendants' said agent used all the diligence which is customary and usual in similar cases, then the plaintiff is not entitled to recover.

Verdict for the plaintiff, \$200. But a new trial was granted upon new evidence discovered, that the woman, who paid for the seats of the slaves, was not named Powell, but Howard, and was the sister of the plaintiff, and resided with her.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]