

HALL v. THE PENNSYLVANIA RAILROAD
COMPANY.

Circuit Court, W. D. Pennsylvania. January 23, 1880.

COMMON CARBIER—BILL OF
LADING—LIMITATION OF LIABILITY—GOODS
BURNED BY A MOB.—An exception in a bill of lading
exempting a common carrier from liability for “loss or
damage on any article or property whatever, by fire or other
casualty, while in transit, or while in depots or places of
transshipment,” is applicable to goods forcibly taken from
the carrier, while in transit, and burned by a lawless mob,
where such carrier was not guilty of any negligence by
which the efficiency of the exception was in any way
impaired.

Action against a common carrier for damages.

John Fallon, for plaintiff.

Waune McVeagh and *Chapman Biddle*, for
defendant.

MCKENNAN, J. This suit was brought to recover
from the defendant the value of certain wool, delivered
to it at Chicago for transportation to Philadelphia. A
jury having been waived, the case was tried by the
court upon the evidence submitted by the parties.
The following facts are found as established by the
evidence:

1. The value of the goods in controversy was, on
the twenty-second day of July, 1877, at the point
of shipment, \$18,060.38, and at the point of
destination, \$20,972.97.
2. “The said goods had, in course of transit from
their place of shipment to their respective
destinations, reached 227 the city of Pittsburgh
at least 24 hours before the fire occurred in said
city, on July 21 and 22, 1877, and were then in
defendant’s custody in the cars in which they
had been shipped, and the said cars and the
said goods were burned in said fire.”

3. "The defendant, about July 19, 1877, found itself unable to maintain, against the force of a mob, entire possession and control of its own property, and the property in its custody, including that of the plaintiff, and to operate its road. It then called upon the proper authorities, including the sheriff of Allegheny county, for assistance and protection; a requisition was made by said sheriff upon the governor for the assistance of the military power of the commonwealth. In pursuance of such requisition, troops were ordered by the governor to aid said sheriff in retaking and redelivering to the defendant entire possession and control of such property, and to enable it to operate its roads; and in endeavoring so to do said troops, on July 21, 1877, came into conflict with said mob and failed to dispossess the same, and immediately after said conflict and failure the property in question was destroyed by fire communicated by said mob."
4. The goods in question were "received by the defendant on bills of lading of the form of the annexed receipt, being one of what is usually known as the 'Red Star Union Line fast freight' receipts, with all and singular the conditions therein contained." This bill of lading is numbered No. 2,856, and is thus identified and exhibited as part of the finding in this case.

The foregoing facts are found in pursuance of the written admission of the parties filed in the case.

It is further found:

5. If the transit of the goods in question had not been interrupted at Pittsburgh, and had been continued in regular course, the train containing them would have been at a considerable

distance from Pittsburgh eastward before the time of the occurrence of the fire.

6. When the train containing said goods reached the depot of the defendant in Pittsburgh, on July 19th, the hands who 228 had conducted it there left it, and a "strike" of all the regular train hands of the defendant occurred on that day, in consequence of a refusal by the defendant to accede to their demand for an increase of wages.
7. On the nineteenth of July there were standing on the track in the depot yard at Pittsburgh a number of cars laden with petroleum, about 150 yards distant from the cars which contained the plaintiff's goods. They were in the same relative position on the day when the fire occurred. The oil cars were kept in place by ordinary brakes. The grade of the road was descending towards the freight cars, so that the oil cars would run towards the former by their own gravity. At or before the occurrence of the fire the oil cars were caused to move down the grade until they came in contact with the freight cars, and they were all burned up together.
8. On the nineteenth, twentieth and twenty-first of July, freight trains continued to be brought into the depot yard of the defendant, at Pittsburgh, both from the east and west, in the regular course of transit, and were there stopped, so that there was an unusual accumulation of trains at that point.

The court is respectfully requested by plaintiff to find, as matters of law:

1. That defendant's duty as common carriers was to carry plaintiff's goods from the several points of shipment to * * Philadelphia, the point of delivery of all, without any unusual or avoidable delay, and, apart from the special conditions in the bill of lading,

defendant is liable for loss from any cause save the acts of God or a public enemy.

2. That defendant did not cease to be common carriers by reason of the conditions in the bill of lading, but continued subject to all liabilities of common carriers, except for losses happening for causes enumerated in said conditions, without default or negligence on the part of defendant's servants or employes, while defendant was actually discharging its duties of carrying the goods from the point of shipment in the usual and proper manner.

3. That the interruption of the transit by reason of the refusal of the servants of the defendant, in charge of the 229 freight trains on which plaintiff's goods were being carried, to perform their duty was a default on part of defendant.

3½. That the strike and refusal to perform duty on the part of the men does not justify or excuse the interruption of the transit of plaintiff's goods; and that defendant's election not to pay the 10 per cent. additional wages demanded, and in lieu thereof to allow the goods to remain at Pittsburgh, wholly or partly in the control of persons who prevented defendant from "operating its road" and performing its contract as common carriers, makes defendant liable for all the consequences, including the destruction and loss of said goods, during the period that the transit was thus interrupted, and the plaintiff's property thus wrongfully controlled, without proof of any other negligence or misconduct on the part of defendant.

4. That allowing or suffering others than its own employes to take from defendant the possession or control, whether in whole or in part, of plaintiff's goods, and to use that control, not for the purpose of furthering or continuing the transit, but for the purpose of suspending and preventing it was a default on part of defendant.

5. That however proper it may have been for defendant to call on the public authorities for protection and assistance “in retaking and redelivering to defendant the entire possession and control of said property,” such act of propriety in no way justifies the previous default in suffering the possession and control thereof to pass out of its hands.

6. That the various risks enumerated in said conditions, which are assumed by plaintiff in relief of defendant’s general liability, and more especially the risk “of fire while in transit,” are limited to losses occurring while the defendant is engaged in carrying the goods, in the proper discharge of its duties under the contract, and do not include loss by fire occurring while the transit is suspended, and the goods in question have been suffered by defendant to pass into the possession and control of persons acting adversely to the duties defendant assumed to discharge.

7. That it was gross default and negligence on the part of defendant to allow freight trains to come into Pittsburgh on 230 the nineteenth, twentieth and twenty-first of July, under the circumstances in the seventh clause of the facts, which the court is requested by plaintiff to find, mentioned.

8. That it was gross default and negligence to allow cars loaded with petroleum to continue to stand on the track, under all the circumstances and manner, and for the period of time in the eighth clause of said facts mentioned.

9. That defendant is responsible for the misconduct and default of the persons whom it suffered to take control and possession, wholly or jointly with itself, of plaintiff’s property, and to continue in such control for the space of two or three days, during the period of time while that control and possession continued, and for all loss resulting from such misconduct.

10. On the facts and law aforesaid, plaintiff prays the court to enter judgment for \$20,973.97, and

interest from July 22, 1877, to the day judgment is rendered.

Answers by the court to the foregoing propositions of law presented by the plaintiff's counsel:

1. This proposition is affirmed.
2. This is also affirmed.

3. As it was the duty of the defendant, as a common carrier, to transport the goods of the plaintiff to their point of destination without unreasonable delay, any injurious interruption of such transportation, by the refusal of the defendant's servants to perform their duty, would be a breach of duty imputable to it; and for any loss to the plaintiff, caused by such delay, the defendant would be liable in damages.

3½. I decline to affirm this proposition. The evidence does not show that the loss complained of was caused by the "strike," nor that any permissive allowance of the retention of the goods at Pittsburgh can be imputed to the defendant. On the contrary, it is admitted by the plaintiff that the defendant was coerced by the superior power of a lawless mob, which usurped control of the train containing the plaintiff's goods, and prevented the defendant from operating its road; that the defendant took prompt steps to meet the emergency by an appeal to the civil authorities for protection and assistance; 231 that these authorities, with the military force summoned by them, were repelled; and that the train, with these goods, was thereupon destroyed by an incendiary fire.

While these circumstances would not protect the defendant against a failure to fulfil its obligations as a common carrier, yet I cannot say that an involuntary technical default warrants an imputation of negligence to the defendant touching a cause of loss which is expressly excepted from its liability.

4. The defendant was deprived of the control of the train containing the plaintiff's goods, and was prevented from continuing their transit, by a force it

was unable to resist. It cannot be held responsible for the *purpose* of the mob, although the act of the mob in intercepting the transportation of the goods might subject the defendant to compensation to the plaintiff for any loss sustained by him by reason of such interrupted transit of his goods. I decline, therefore, to affirm this proposition.

5. This proposition is affirmed, with the qualification that I do not say that the defendant was in fault, otherwise than as and for the reason stated in the answer to proposition 3½.

6. I decline to affirm this proposition. The exception in the bill of lading is that the carrier shall not be liable "for loss or damage on any article or property whatever, by fire or other casualty, while in transit, or while in depots or places of transshipment." The engagement of the carrier is to assume the custody of the property entrusted to him at the point of shipment and to deliver it at the place of destination, and the obvious intent, as well, I think, as the clear import, of the exception, is to protect him against the consequences of fire during the continuance of his duty as a carrier. His qualified liability is co-extensive with this duty, and he forfeits its protection only by some fault of his own in connection with the casualty to which the exception refers. Nor can I regard it as within the reason of the exception to hold that it is eliminated from the contract when the property in the carrier's charge is wrested from him by a hostile force, which he is unable to resist, and it is consumed in an incendiary fire, 232 although his exclusion from the possession and control of it may last for two days before it is thus destroyed.

7. I decline to affirm this proposition.

8. I decline to affirm this proposition for the reasons that the petroleum cars were presumably in the usual and proper place for them in the depot yard; that they were at a safe distance from the cars containing the

plaintiff's goods, and were there secured by mechanical appliances usually employed for that purpose, that they might lawfully be kept there, and that their removal into contact with the other cars was the act of the incendiary mob which had, for two days before, maintained a forcible mastery of the situation.

9. I decline to affirm this proposition.

Upon the whole case I am of the opinion, and so find, that the loss complained of was caused by fire, while the plaintiff's goods were in transit by the defendant, within the meaning of the exception in the bill of lading; that the defendant is not shown to have been guilty of any negligence by which the efficiency of the exception is in anywise impaired; and hence that the plaintiff is not entitled to recover. Judgment will therefore be entered in favor of the defendant.

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