UNITED STATES v. HARRIS et al.

(Circuit Court of Appeals, Third Circuit. March 14, 1898.)

CARRIAGE OF LIVE STOCK—FAILURE TO UNLOAD—LIABILITY OF RECEIVER.

Under Rev. St. §§ 4386–4389, relating to the shipment of live stock, and imposing a penalty upon "any company, owner, or custodian of such animals," for keeping them in cars more than 28 consecutive hours without unloading, the receiver of a railroad company, appointed by and acting under the orders of a federal court, is not liable to such penalty.

In Error to the District Court of the United States for the Eastern District of Pennsylvania.

This was an action at law by the United States against Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, as receivers of the Philadelphia & Reading Railroad Company, to recover the penalty prescribed by Rev. St. § 4388, for keeping stock in cars for an excessive time without unloading. The judgment below was for defendants, and the United States sued out this writ of error.

James M. Beck, for the United States.

John G. Lamb, for defendants in error.

Before ACHESON and DALLAS, Circuit Judges, and KIRKPATRICK, District Judge.

ACHESON, Circuit Judge. The question here is whether the receivers of the Philadelphia & Reading Railroad Company, appointed by and acting under the orders of the circuit court of the United States for the Eastern district of Pennsylvania, are liable, under sections 4386–4389 of the Revised Statutes of the United States, to the penalty imposed by section 4388 for keeping horses in cars more than 28 consecutive hours without unloading. The persons designated in section 4388, and made liable to the penalty, are "any company, owner or custodian of such animals." The district court held that this language does not embrace receivers, who are simply the court's officers appointed to execute its orders; that the Philadelphia & Reading Railroad was in the custody of the court, and was controlled and managed by it through these officers; and that the statute, being penal, was not to be extended by construction so as to take in receivers. We cannot doubt the soundness of these views, and, accordingly, we affirm the judgment of the district court.

It is proper that we should here state that, shortly after the case was argued, this court (all the judges concurring) reached the conclusion above expressed; but, owing to a misunderstanding among the judges as to the assignment of the case, the announcement of the decision has been delayed. The judgment of the district court is affirmed.

TENNESSEE COAL, IRON & RAILROAD CO. v. HALEY.

(Circuit Court of Appeals, Fifth Circuit. February 8, 1898.)

No. 637.

1. WITNESSES—EVIDENCE OF CHARACTER—EX-CONVICT.
A party who is obliged to use as a witness an ex-convict may show by his testimony that he was a "trusty."

2. SAME—SHOWING INTEREST.
Where an employé is used as a witness, it is permissible for the adverse party to show what wages he receives.

In Error to the Circuit Court of the United States for the Northern District of Alabama.

This was an action by John A. Haley, as administrator of Walter Haley, deceased, against the Tennessee Coal, Iron & Railroad Company to recover for the wrongful death of his intestate, under the employer's liability statute of Alabama. Judgment for plaintiff, and defendant brings error.

The case is fairly stated by counsel for plaintiff in error as follows:

This was an action for damages for the wrongful death of defendant in error's intestate while in the employment of the plaintiff in error in one of its coal mines in or near Birmingham, Ala. The action is brought under the employer's liability act of Alabama, which is section 2590 of the Code of Alabama of 1886. The negligence charged in the complaint against plaintiff in error is the failure to prop a piece of rock or slate in the slope of its coal mine, by reason of which failure it is charged that the rock or slate fell on the intestate while he was walking under it, in pursuance of his duty as such employé, killing him, as alleged in the complaint. The evidence as to the negligence of the plaintiff in error was conflicting, and no question of law is raised on this issue by the assignments of error. The principal assignments of error are based on the rulings of the trial court on the admission and rejection of testimony. The third charge refused by the court, and requested by the plaintiff in error, raises the question of the intestate's contributory negligence. The facts, briefly stated, are as follows: The intestate was in charge of a gang of two or three convicts, repairing the tram track that ran down the slope of the coal mine. After having repaired a place in the track, the gang started by the usual route to get water to drink. As they were passing through the slope to the watering place, a piece of rock or slate fell from the roof of the slope on the intestate, causing his instant death. The testimony of the defendant in error tended to show that this piece of rock or slate had been at one time propped, and that 10 or 12 months before the accident a trip of tram cars had jumped the track at this place, and knocked the props, holding this piece of rock or slate, down, and that the props had never been replaced, though the piece of rock or slate was loose before and after the props were knocked down, and that the condition of this place in the roof could have been discovered by sounding it with a pick or hammer, which it was the duty of one Holder to do, long before the time of the accident. The testimony offered by defendant in error also tended to show that the witness Holder was informed that the props had been knocked out shortly after they were knocked out, and that it was his duty to have them replaced, which he failed to do. The testimony of plaintiff in error, on the contrary, tended to show that no props had ever been placed where the intestate met his death, but that the props referred to by the testimony of defendant in error were at another and different place from that at which intestate was killed. The testimony of plaintiff in error tended to show that the rock or slate that fell on intestate was to all appearances sound and safe up to the time it fell; that its condition could only be detected by sounding; that it was the custom only to sound where there were visible indications of danger; that a piece of slate might become detached from the roof of a mine in as short a space as an hour from the action of water on the slate. The undisputed testimony showed that intestate was put in charge of the gang