

Boyce Vs. Anderson

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Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 150

Appellant : Boyce

Respondent : Anderson

Judgement :

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Boyce v. Anderson

27 U.S. (2 Pet.) 150

ERROR TO THE CIRCUIT

COURT OF KENTUCKY

SYLLABUS

The law regulating the responsibility of common carriers does not apply to the case of carrying intelligent beings such as negroes. The carrier has not and cannot have over them the same absolute control that he has over inanimate matter. In

the nature of things and in their character they resemble passengers, and not packages of goods. It would seem reasonable therefore, that the responsibility of the carrier should be measured by the law which is applicable to passengers, rather than by that which is applicable to the carriage of common goods.

The law applicable to common carriers is one of great "rigor," though to the extent to which it has been carried, and in the cases to which it has been applied, its necessity and its policy are admitted; yet it ought not to be carried further or applied to new cases. It has not been applied to living men, and it ought not to be.

The ancient rule of the law of carriers that the carrier is liable only for ordinary neglect does not apply to the conveyance of slaves.

The case was submitted to the court, on the part of the counsel for the plaintiff in error, Mr. Rowan, upon the following brief.

"This was an action in the court below against defendants in error, owners of the steamboat *Washington*, to recover from them the value of four slaves, the property of the plaintiff, who he alleged were delivered to the commandants of said boat to be carried thereon, and who, he alleged, were drowned by the carelessness, negligence, neglect or mismanagement of the captain and commandants of the said steamboat."

"The declaration contained two counts, which are in the ordinary form."

"Plea not guilty, and joinder in the usual form."

"Upon the trial of the cause, the following bill of exceptions was signed by the judges, viz., "

" Be it remembered that at the trial of this cause, the plaintiff gave evidence conducing to prove that the defendants were owners of the steamboat *Washington*. That the said boat *Washington* by them was used and employed, on the Mississippi and Ohio Rivers as a common carrier of property and passengers, for freight and reward. That the steamboat *Teche*, in descending

the Mississippi, with the plaintiff's agent, and the negroes mentioned in the declaration and others on board, was blown up and set on fire, and the passengers escaped from the burning *Teche* to the shore, about six miles below Natches. That the steamboat *Washington* was ascending the Mississippi, and passed the burning *Teche*, and when she came opposite to them, the plaintiff's agent, the negroes, and others who had escaped from the *Teche*, were on shore; the agent of the plaintiff, with the negroes belonging to the plaintiff, was received into the yawl belonging to the defendants, a tender to the steamboat, for the purpose of conveying the negroes from the shore on the Mississippi to the steamboat, to be put on board the steamboat, and that the yawl was upset, the negroes in the declaration mentioned were drowned, and evidence conducing to show that the yawl was upset by ill and imprudent management in putting the steamboat in motion as the yawl approached, and before the passengers were on board the steamboat."

The defendants on their part gave evidence conducing to show that these negroes and other persons, to the number of sixteen, had been passengers on board the steamboat *Teche*, which had taken fire, and the passengers had been put on shore about six miles below Natches, from said *Teche* in her distress. That these passengers, including the negroes, were taken into the yawl of the steamboat *Washington*, from their distress, so as aforesaid, from motives of humanity, and without any view to reward, at the request of captain Campbell commanding the *Teche*, or of the agent of the plaintiff. That there was no agreement for hire, reward, or freight; none was charged or received. That it was the custom of steamboats in the river not to claim passage money or reward in such cases from persons who were in distress, and unable to pay. And to repel the evidence of plaintiff as to negligence, it appeared that there was no contract in this case between the agent of the plaintiff and the owners or officer of the steamboat about reward, but the yawl was sent to shore and the passengers taken in, without any contract, or conversation about the carriage, or about any reward.

The steamboat *Teche* when she took fire was descending. The steamboat *Washington* was ascending.

Upon this evidence the plaintiff moved the court to instruct the jury

1. That if they find from the evidence that the defendants were owners of the steamboat, and by themselves, their officer, or servants of the boat did actually receive into their yawl, the negroes of the plaintiff to be carried from shore on board the steamboat, they are responsible for neglect and imprudent management notwithstanding no reward or hire or freight or wages were to have been paid by Boyce to defendants.
2. That if they find from the evidence that the steamboat *Washington* was owned by defendants and used by them on the river as a common carrier for wages and freight, and that the slaves of plaintiff were actually received by the agents and servants of the defendants on board of the yawl of and belonging to the defendants as a tender of the steamboat, to be *carried* from the land, put on board the steamboat, to be therein *carried* and transported, that the defendants were bound *to the most skillful and careful management*, and if the slaves were drowned in consequence of any omission of such skillful and careful management by the agents and servants in the conduct and navigation of the boat and tender, the defendants are answerable to the plaintiffs for the value of the slaves.
3. That if the jury believe the evidence in this case, the defendants would have had a legal right to demand a reasonable compensation for their undertaking to transport said slaves on board their boat, and their afterwards waiving or declining that right from motives of humanity or any other motive does not change or diminish their legal responsibility as common carriers for hire or reward.

The defendants moved the court

"to instruct the jury that if they find from the evidence that the slaves in controversy were taken on board of the yawl at the instance, and in pursuance of the request of the captain of the *Teche*, from motives of humanity and courtesy alone, that

the defendants are not liable unless they shall be of opinion that

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the slaves were lost through the gross neglect of the captain of the steamboat, or the other servants or agents of the defendants."

The court gave the first instruction moved by the plaintiff, with this qualification, "that gross negligence, or unskillful conduct was required to charge the defendants." The second and third instruction moved by the plaintiff, the court refused to give, and instructed the jury,

" *that the doctrine of common carriers did not apply to the case of carrying intelligent beings, such as negroes, but that the defendants were chargeable for negligence, or unskillful conduct.*"

The court gave the instructions asked for by the defendants.

It is believed and alleged that the court erred in refusing to give the instructions required by plaintiff and in giving those required by defendants, and especially in instructing the jury that the doctrine of common carriers did not apply to the case.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

There being no special contract between the parties in this case, the principal question arises on the opinion expressed by the court "that the doctrine of common carriers does not apply to the case of carrying intelligent beings, such as negroes."

That doctrine is that the carrier is responsible for every loss which is not produced by inevitable accident. It has been pressed beyond the general principles which govern the law of bailment by considerations of policy. Can a sound distinction be taken between a human being in whose person another has an interest, and inanimate property?

A slave has volition, and has feelings which cannot be entirely disregarded. These properties cannot be overlooked in conveying him from place to place. He cannot be stowed away as a common package. Not only does

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humanity forbid this proceeding, but it might endanger his life or health. Consequently this rigorous mode of proceeding cannot safely be adopted, unless stipulated for by special contract. Being left at liberty, he may escape. The carrier has not and cannot have the same absolute control over him that he has over inanimate matter. In the nature of things and in his character, he resembles a passenger, not a package of goods. It would seem reasonable, therefore, that the responsibility of the carrier should be measured by the law which is applicable to passengers, rather than by that which is applicable to the carriage of common goods.

There are no slaves in England, but there are persons in whose service another has a temporary interest. We believe that the responsibility of a carrier for injury which such person may sustain has never been placed on the same principle with his responsibility for a bale of goods. He is undoubtedly answerable for any injury sustained in consequence of his negligence or want of skill, but we have never understood that he is responsible further.

The law applicable to common carriers is one of great "rigor." Though to the extent to which it has been carried, and in the cases to which it has been applied, we admit its necessity and its policy, we do not think it ought to be carried further or applied to new cases. We think it has not been applied to living men, and that it ought not to be applied to them.

The directions given by the court to the jury informed it that the defendants were responsible for negligence or unskillful conduct, but not otherwise.

Sir William Jones, in his Treatise on Bailments 14, says,

"When the contract is reciprocally beneficial to both parties, the obligation hangs in an even balance, and there can be no reason to recede from the standard; nothing more, therefore, ought in that case to be required than ordinary diligence, and the bailee should be responsible for no more than ordinary neglect."

In another place (p. 144) the same author says

"A carrier for hire ought, by the rule, to be responsible only for ordinary neglect, and in the time of Henry

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VIII, it appears to have been generally holden that a common carrier was chargeable in case of a loss by robbery only when he had traveled by ways dangerous for robbing or driven by night or at any inconvenient hour."

This rule, as relates to the conveyance of goods, was changed as commerce advanced from motives of policy. But if the court is right in supposing that the strict rule introduced for general commercial objects does not apply to the conveyance of slaves, the ancient rule "that the carrier is liable only for ordinary neglect," still applies to them.

If the slaves were taken on board the yawl to be conveyed in the steamboat solely in consequence of their distress and from motives of humanity alone, no reward, hire, or freight being to be paid for their passage as the first prayer of the plaintiff and the prayer of the defendant suppose, the carrier would certainly be responsible only in a case of gross neglect, and the qualification annexed to this construction was correct.

We think that in the case stated for the instruction of the circuit court, the defendants were responsible for the injury sustained only in the event of its being caused by the negligence or the unskillfulness of the defendants or their agents, and that there is no error in the opinion given.

This cause came on to be heard on a transcript of the record from the Circuit Court of the United States for the District of Kentucky and was argued by counsel, on

consideration whereof it is considered, ordered, and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.

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