

Stokes Vs. Saltonstall

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Appellant : Stokes

Respondent : Saltonstall

Judgement :

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Stokes v. Saltonstall

38 U.S. (13 Pet.) 181

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

In an action against the owner of a stage coach used for carrying passengers for an injury sustained by one of the passengers by the upsetting of the coach, the owner is not liable, unless the injury of which the plaintiff complains was

occasioned by the negligence or want of proper skill or care in the driver of the carriage, in which he and his wife were passengers, and the facts that the carriage was upset, and the plaintiff's wife injured, are *prima facie* evidence that there was carelessness, or negligence, or want of skill on the part of the driver, and throws upon the defendant the burden of proving that the accident was not occasioned by the driver's fault.

It being admitted that the carriage was upset and the plaintiff's wife injured, it is incumbent on the defendant to prove that the driver was a person of competent skill, of good habits, and in every respect qualified and suitably prepared for the business in which he was engaged, and that he acted on this occasion with reasonable skill and with the utmost prudence and caution, and if the disaster in question was occasioned by the least negligence or want of skill or prudence on his part, then the defendant is liable in the action.

If there was no want of proper skill or care or caution on the part of the driver of a stage coach, and the stage was upset by the act of the plaintiff or his wife in rashly and improperly springing from it, then the defendant is not liable to an action, but if the want of proper skill or care of the driver placed the passengers in a state of peril, and they had at that time a reasonable ground for supposing that the stage would upset, or that the driver was incapable of managing his horses, the plaintiff is entitled to recover, although the jury may believe from the position in which the stage was placed by the negligence of the driver, the attempt of the plaintiff or his wife to escape may have increased the peril, or even caused the stage to upset, and although they may also find that the plaintiff and his wife would probably have sustained little or no injury if they had remained in the stage.

If the driver was a person of competent skill, and in every respect qualified and suitably prepared for the business in which he was engaged, and the accident was occasioned by no fault or want of skill or care on his part, or that of the defendant or his agents, but by physical disability arising from extreme and unusual cold, which rendered him incapable for the time to do his duty, then the owner of the stage is not liable in an action for damages, for an injury sustained by a person who was a passenger.

The defendant in error, Francis W. Saltonstall, in September, 1836, instituted an action for the recovery of damages against Richard C. Stockton and William B. Stokes, owners of a line of stages for carrying passengers from Baltimore to Wheeling, Mr. Saltonstall and his wife having on 6 December, 1836, been passengers in the stage, when, by the carelessness, unskillfulness, and default of the driver, the stage was upset, by reason of which Mrs. Saltonstall had her hip fractured, and several other bones of her body broken, and was otherwise greatly cut, bruised, and injured, so that her life was endangered.

By an agreement between the counsel for the plaintiff and the defendant's no objection was to be taken to the nonjoinder of other persons as defendants, who were also owners or interested in the line of stages when the injury complained of in the action occurred, and the plaintiff might recover in this action any damages which

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might be recovered in an action by himself and wife, or by himself alone.

Richard C. Stockton having died after the institution of the suit, it was proceeded in against William B. Stokes, who survived him.

The cause was tried before a jury, and a verdict was given for the plaintiff, under the instructions of the court, for seven thousand dollars. On this verdict the court gave a judgment for the plaintiff.

The counsel for the defendant tendered a bill of exceptions to the opinion of the court, and he afterwards prosecuted this writ of error.

The bill of exceptions stated at large the evidence given on the trial of the cause.

The evidence of the witnesses for the plaintiff, taken under a commission to New Orleans and examined on the trial, stated that at the last change of horses before the accident, the passengers generally remarked that the driver seemed to have drunk too much to go on. Mr. Saltonstall, the plaintiff, went to the agent, or the person avowing himself as such and who was acting in that capacity, and reported

to him the observation made by the passengers; the agent replied that the driver was all straight and that the appearance of his being intoxicated was entirely owing to his having driven during the night previous, which had been excessively cold. When the stage arrived at about two miles from Bevansville, the passengers felt the stage strike against a mound or ridge on the right side of the road. Mr. Saltonstall on observing this, immediately jumped out, as was believed, with the intention of stopping the horses; Mrs. Saltonstall attempted to follow her husband, but fell to the ground at the very instant the stage upset, and it fell directly on her. The upset took place on Sunday afternoon, 5 December, at about four o'clock in the afternoon. It was broad daylight. The plaintiff's wife was dreadfully injured; she was taken up and carried to a log house in the neighborhood. The injury was occasioned by the falling of the stage on her body.

A witness stated that the road was perfectly level and in good traveling order. There had been ice, but it had been so beaten down that there was only a little remaining on the sides of the road. The center was free from it. The road was not considered dangerous or difficult. The driver was believed to be intoxicated, and his intoxication was increased by his drinking with a man on the seat along side of him. This belief was produced by his reckless and irregular manner of driving, which called for repeated remonstrances from the passengers and which were wholly unattended to, and for his apparent stupid and drunken manner of conduct after the upset. He was totally unfit for anything; he could not or would not answer a question nor afford the least possible assistance.

The injuries sustained by Mrs. Salstonstall were proved by the surgeons and medical attendants, and they were such as to make it impossible, or too dangerous to attempt to move her from the log hut, from the time of the accident, the sixth day of December, until

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the eighteenth day of December, when she was carried to Bevansville, where she remained until the eighteenth day of May following. In July of the same year, she was in Philadelphia, still in a state of great suffering, and using crutches.

The plaintiff also proved by Mr. Ludlow, who was a passenger in a stage which arrived after the accident, that the road was perfectly good and was one of which a stage would not be likely to upset. The witness went to the driver and had some conversation with him. The defendant's counsel objected to the statements of the driver being admitted in evidence, but the court declared them to be admissible, to which the counsel for the defendant excepted. The plaintiff then further proved by Mr. Ludlow that he asked the driver how the accident happened, when he stated he had upset fifty coaches, and he did not believe the woman was as much hurt as she said she was.

The testimony offered by the defendant was intended to show the capacity and sobriety of the driver and that the road was icy, difficult, and dangerous, and that the upsetting of the stage might be accounted for by the slippery and icy condition of the road. The evidence for the defendants, it was contended, proved that had the wife of the plaintiff remained in the stage, no injury would have resulted to her. The other passengers were not materially bruised. The defendant also proved that the coach and harness were properly made and of sufficient strength, and that the horses were good and steady.

The defendant's counsel prayed the court to instruct the jury in sixteen different prayers. Among those were the following:

"1. If the jury shall believe from the evidence in the cause that the injury to the plaintiff's wife was occasioned solely by the overturning of the coach and by its falling upon her, and that such overturning was occasioned by the act of the plaintiff and his wife, or either of them, in leaping from, or otherwise in leaving the said coach, and shall further believe from the evidence in the cause that at the time of such leaping from or of such leaving said coach, there did not exist any certain peril, nor any immediate danger of personal injury, nor any reasonable cause of apprehension of impending danger by remaining in the coach, then the plaintiff is not entitled to recover upon the issue joined in this case, in respect to the said injury sustained by his wife, even if they also believe from the evidence in the cause, that the driver was guilty of carelessness, negligence, and misconduct, in placing the coach in the particular place and situation in which it was at the time

of such leaping from, or leaving the coach."

"2. If the jury shall believe from the evidence in the cause that the injury to the plaintiff's wife was occasioned solely by the overturning of the coach, and its falling upon her, and that such overturning was occasioned by the act of the plaintiff and his wife, or either of them, in leaping from or otherwise in leaving the coach,

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and shall further believe from the evidence in the cause, that such leaping from, or such leaving the coach, was not under the actual circumstances an act of prudent precaution for the purpose of self-preservation; nor such an act as a person of ordinary care, prudence, or resolution would have adopted, under the actual circumstances, even if they shall believe from the evidence, that such leaping from or such leaving said coach was under the existence and incitement of actual alarm and apprehension of supposed impending danger, then the plaintiff is not entitled to recover upon the issue joined in this cause in respect of said injury sustained by his said wife."

"3. If the jury shall believe from the evidence in the cause that the injury sustained by the plaintiff's wife was occasioned solely by the overturning of the coach and by its falling upon her, and that such overturning was occasioned by the act of the plaintiff and his said wife or by the act of either of them in leaping from or otherwise in leaving said coach, and shall further believe, from the evidence in the cause, that such leaping from, or leaving of said coach was not effected with proper caution and prudence, under the actual circumstances, as well in reference to the situation in which the said plaintiff and his wife (if the overturning was occasioned by the act of both) were placed, or if such overturning was occasioned only by the act of one, in reference to the situation of such one of them, by whom such overturning was occasioned, was placed, as also in reference to the situation in which said coach was placed in position, with respect to the ground on which it stood and otherwise, then the plaintiff is not entitled to recover in respect to said injury to his said wife."

"4. If the jury shall believe from the evidence in the cause that the injury to the plaintiff's wife was occasioned solely by the falling of the coach upon her, and that she was then outside of the coach and on the ground, and shall further believe that at the time she leapt from or left the coach, she knew or believed that it was overturning or about to overturn, and leapt from or left it for that cause, and that she designedly alighted on the ground in the direction in which the coach was overturning or about to overturn; that then, such her act was a rash and imprudent act, and the defendant is not responsible upon the issue joined in this cause for the injury which she so sustained, even if the jury shall at the same time believe that such overturning was occasioned by the fault or negligence of the driver."

"5. If the jury shall find from the evidence that the plaintiff's wife, if she had remained in the coach, would not have been materially injured by the overturning of the same, and shall find from all the evidence in the cause that a discreet and prudent person, under the circumstances in which she was placed, as disclosed in evidence, would have and ought to have remained in the coach, and that she placed herself imprudently and indiscreetly and rashly

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in the way of incurring the actual injury which she sustained, that then the defendant is not liable, upon the issue joined in this case, to answer in damages for such injury."

"6. If the jury shall believe from the evidence in the cause, that the plaintiff and his wife, or either of them, by leaping from the coach or leaving the same, contributed in fact to produce the happening of the injury to the plaintiff's wife which she actually sustained, and shall further believe that in so leaping from or leaving the said coach, the same was done unnecessarily and indiscreetly, or imprudently, or rashly, incautiously, or without ordinary care, that then the plaintiff is not entitled to recover in respect of said injury; even if the jury shall believe that the driver was guilty of gross negligence and misconduct, and was partly, or even mainly, the cause of the happening of such injury."

"16. That the *prima facie* evidence of negligence arising from the fact of the upsetting of the coach, and the injury to the plaintiff's wife, is rebutted by the proof of the fact, if the jury so believe from the evidence, that the defendants had a first-rate coach, a competent set of horses, and good and proper harness, and a competent, prudent, and careful driver at the time of the accident, and that then the burden of proving negligence is thrown upon the plaintiff."

The plaintiff also offered prayers to the court for instructions to the jury.

All the prayers offered by the defendant and the plaintiff were rejected by the court, and the court instructed the jury:

"1. That the defendant is not liable in this action unless the jury find that the injury of which the plaintiff complains was occasioned by the negligence or want of proper skill or care in the driver of the carriage in which he and his wife were passengers, and the facts that the carriage was upset and the plaintiff's wife injured are *prima facie* evidence that there was carelessness, or negligence, or want of skill on the part of the driver, and throws upon the defendant the burden of proving that the accident was not occasioned by the driver's fault."

"2. It being admitted that the carriage was upset and the plaintiff's wife injured, it was incumbent on the defendant to prove that the driver was a person of competent skill, of good habits, and in every respect qualified and suitably prepared for the business in which he was engaged, and that he acted on this occasion with reasonable skill and with the utmost prudence and caution, and if the disaster in question was occasioned by the least negligence or want of skill or prudence on his part, then the defendant is liable in this action."

"3. If the jury find there was no want of proper skill, or care, or caution on the part of the driver, and that the stage was upset by the act of the plaintiff or his wife, in rashly and improperly springing from it, then the defendant is not liable to this action, but if the want of proper skill or care of the driver placed the passengers in a state of peril, and they had at that time a reasonable ground for

supposing that the stage would upset, or that the driver was incapable of managing his horses, the plaintiff is entitled to recover, although the jury may believe, from the position in which the stage was placed by the negligence of the driver, the attempt of the plaintiff or his wife to escape may have increased the peril or even caused the stage to upset, and although they may also find that the plaintiff and his wife would probably have sustained little or no injury if they had remained in the stage."

"4. If the jury shall find that the driver was a person of competent skill, and in every respect qualified and suitably prepared for the business in which he was engaged, and that the accident was occasioned by no fault or want of skill or care on his part or that of the defendant or his agents, but by physical disability, arising from extreme and unusual cold, which rendered him incapable for the time to do his duty, then the defendant is not liable in this action."

The defendant excepted to the refusal of the prayers offered by him, and to the instructions given by the court to the jury.

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MR. JUSTICE BARBOUR delivered the opinion of the Court.

This was an action on the case brought by the defendant in error against the plaintiff in error and Richard C. Stockton to recover damages for an injury sustained by his wife by the upsetting of a stage coach in which she was a passenger, and of which said Stockton and Stokes were the proprietors. The suit was brought in the name of Saltonstall alone, but there is in the record an agreement signed by the counsel of the parties, stipulating, amongst other things, that the plaintiff might recover in it, any damages which might be recovered in an action by himself and wife, or by himself alone.

The declaration alleges that the injury complained of was caused by the negligence and want of skill of the driver, then in the employment of the said Stockton and Stokes, and engaged in driving their coach, in which the plaintiff's

wife was a passenger at the time she received the injury. In the progress of the case, Stockton, one of the defendants, died, and his death having been suggested upon the record, the case proceeded against Stokes. He pleaded the general issue of "not guilty," on which issue was joined.

At the trial, the defendant took a bill of exceptions to the ruling of the court, from which it appears that he asked the court to give to the jury sixteen several instructions, and the plaintiff asked of the court two instructions, all of which, as well those asked by the defendant, as by the plaintiff, the court refused. But the court did give the jury the four following instructions, to-wit:

"1. That the defendant is not liable in this action unless the jury find that the injury of which the plaintiff complains was occasioned by the negligence or want of proper skill or care in the driver of the carriage in which he and his wife were passengers, and the facts that the carriage was upset, and the plaintiff's wife injured, are *prima facie* evidence that there was carelessness, or negligence, or want of skill on the part of the driver, and throws upon the defendant the burden of proving that the accident was not occasioned by the driver's fault."

"2. It being admitted that the carriage was upset and the plaintiff's wife injured, it is incumbent on the defendant to prove that the driver was a person of competent skill, of good habits, and in every respect qualified and suitably prepared for the business in which he was engaged, and that he acted on this occasion with reasonable skill, and with the utmost prudence and caution, and if the disaster in question was occasioned by the least negligence or want of skill or prudence on his part, then the defendant is liable in this action. "

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"3. If the jury find there was no want of proper skill, or care, or caution on the part of the driver, and that the stage was upset by the act of the plaintiff or his wife, in rashly and improperly springing from it, then the defendant is not liable to this action; but if the want of proper skill or care of the driver placed the passengers in a state of peril, and they had at that time a reasonable ground for supposing that

the stage would upset, or that the driver was incapable of managing his horses, the plaintiff is entitled to recover, although the jury may believe from the position in which the stage was placed by the negligence of the driver, the attempt of the plaintiff or his wife to escape, may have increased the peril, or even caused the stage to upset, and although they may also find that the plaintiff and his wife would probably have sustained little or no injury if they had remained in the stage."

"4. If the jury shall find that the driver was a person of competent skill, and in every respect qualified and suitably prepared for the business in which he was engaged, and that the accident was occasioned by no fault or want of skill or care, on his part, or that of the defendant or his agents, but by physical disability arising from extreme and unusual cold, which rendered him incapable for the time to do his duty, then the defendant is not liable in this action."

Under these instructions, the plaintiff obtained a verdict for seven thousand one hundred and thirty dollars, for which the court rendered a judgment in his favor, and from that judgment this writ of error is taken.

We consider it altogether unnecessary to notice any of the instructions asked for by the defendant and which the court refused to give because those which they did give cover the whole ground, and therefore it depends upon their correctness whether the judgment is to be affirmed or not.

We think that the court laid down the law correctly in each and all of these instructions. It is certainly a sound principle that a contract to carry passengers differs from a contract to carry goods. For the goods, the carrier is answerable at all events except the act of God and the public enemy. But although he does not warrant the safety of the passengers at all events, yet his undertaking and liability as to them go to this extent: that he or his agent if, as in this case, he acts by agent, shall possess competent skill, and that as far as human care and foresight can go, he will transport them safely. The principle is in substance thus laid down in the case of *Christie v. Griggs*, 2 Campbell 79.

So it is also in the case of *Aston v. Heaven*, 2 Espinasse 533, where it is said that coach owners are not liable for injuries happening to passengers from accident or misfortune where there has been no negligence or default in the driver; that the action stands on the ground of negligence, but that a driver is answerable for the smallest negligence.

The principle is thus laid down in 2 Kent's Commentaries 466:

"The proprietors of a stage coach, do not warrant the safety of

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passengers in the character of common carriers, and they are not responsible for mere accidents to the persons of the passengers, but only for the want of due care."

What the author understood to be due care will appear from this consideration -- that in support of his proposition, he refers to the two cases which we have just cited.

In Story on Bailments, many cases are collected together upon this subject in pages 376-377 as illustrative of the principle, which is by that author laid down in these words:

"If he (that is, the driver) is guilty of any rashness, negligence, or misconduct, or is unskillful, or deviates from the acknowledged custom of the road, the proprietors will be responsible for any injuries resulting from his acts. Thus, if the driver drives with reins so loose that he cannot govern his horses, the proprietors of the coach will be answerable. So if there is danger in a part of the road or in a particular passage and he omits to give due warning to the passengers. So if he takes the wrong side of the road, and an accident happens from want of proper room. So if, by any incaution, he comes in collision with another carriage."

To which we will add the further example: wherever there is rapid driving, which, under the circumstances of the case, amounts to rashness. In short, says the author, he must in all cases exercise a sound and reasonable discretion in

traveling on the road to avoid dangers and difficulties, and if he omits it, his principals are liable.

The only case which is recollected to have come before this Court on this subject is that of [Boyce v. Anderson](#), 2 Pet. 150. That was an action brought by the owner of slaves against the proprietor of a steamboat on the Mississippi to recover damages for the loss of the slaves alleged to have been caused by the negligence or mismanagement of the captain and commandant of the boat. The Court distinguished slaves, being human beings, from goods, and held that the doctrine as to the liability of common carriers for mere goods did not apply to them, but that in respect of them, the carrier was liable only for ordinary neglect. The Court seems to have considered that case as being a sort of intermediate one between goods and passengers. We think, therefore, that anything said in that case in the reasoning of the Court must be confined in its application to that case, and does not affect the principle which we have before laid down. That principle, in our opinion, fully justifies the first and second instructions given by the court, except that part of those instructions which relates to the *onus probandi*, and although we think this portion of the instructions as well founded in justice and law as the other, yet it rests upon a different ground. The first part has relation to the liability of the defendant, the second to the question on whom devolves the burden of proof. If the question were one of the first impression, we should, upon the reason and justice of the case, adopt the principle laid down by the circuit court. But although there is no case which could have the weight of authority in this Court, we are not without a decision in relation to it. The very point was decided in

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2 Camp. 80, where it is said by Mansfield, Chief Justice, that he thought the plaintiff had made a *prima facie* case by proving his going on the coach, the accident, and the damage he had suffered.

It is objected, however, in the printed argument which has been laid before us that although the facts of the overturning of the coach, and the injury sustained, are *prima facie* evidence of negligence, they did not throw upon the defendant the

burden of proving that such overturning and injury were not occasioned by the driver's default, but only that the coachman was a person of competent skill in his business; that the coach was properly made, the horses steady, &c.;

Now taking that portion of the first and second instructions which relates to the burden of proof together, we understand them as substantially amounting to what the objection itself seems to concede to be a proper ruling and what we consider to be the law. For although in the first it is said that these facts threw upon the defendant the burden of proving that the accident was not occasioned by the driver's fault, yet in the second it is declared that it was incumbent on the defendant, in order to meet the plaintiff's *prima facie* case, to prove that the driver was a person of competent skill, of good habits, and in every respect qualified and suitably prepared for the business in which he was engaged, and that he acted on the occasion with reasonable skill and with the utmost prudence and caution.

This affirmative evidence, then, was pointed out by the court as the means of proving what was in terms stated in the form of a negative proposition before -- that is, that the accident was not occasioned by the driver's fault. The third instruction also announces a principle which we think stands supported by the soundest reason, and we should therefore, adopt it as being correct if it were altogether a new question.

But this too is in accordance with the doctrine of Lord Ellenborough, in 1 Starkie 493, in which he says that to enable the plaintiff to sustain the action it is not necessary that he should have been thrown off the coach; it is sufficient if he were placed by the misconduct of the defendant, in such a situation as obliged him to adopt the alternative of a dangerous leap, or to remain at certain peril; if that position was occasioned by the fault of the defendant, the action may be supported. On the other hand, if the plaintiff's act resulted from a rash apprehension of danger which did not exist, and the injury which he sustained is to be attributed to rashness and imprudence, he is not entitled to recover.

The instruction which we are now considering is framed in the spirit of the principle which we have just stated, and we think it wholly unexceptionable.

The fourth instruction which was given to the jury was in favor of the defendant, now plaintiff in error, and therefore need not be

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considered. Upon the whole, we think that there is no error in the judgment. It is therefore

Affirmed with costs.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland, and was argued by counsel. On consideration whereof it is ordered and adjudged by this Court, that the judgment of the circuit court in this cause be and the same is hereby affirmed with costs and damages at the rate of six percentum per annum.

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