

Parker v South Eastern Railway Company; Gabell v South Eastern Railway Company

(1877) 2 CPD 416

Chapter 6

Relevant facts

Parker and Gabell each deposited a bag in the cloakroom at the South Eastern Railway Company ('SERC') train station. They paid the fee and received a paper ticket. On one side of the ticket a number and date were written with information about the opening hours of the cloakroom and the words 'See back'. On the reverse side of the ticket a number of clauses relating to the articles left by passengers at the cloakroom, including the following limitation of liability clause:

The company will not be responsible for any package exceeding the value of 10l.

The limitation of liability clause was also displayed on a notice hung on the wall of the cloakroom.

When Parker and Gabell respectively presented their tickets at the cloakroom for the return of their bags, the bags could not be found and could not subsequently be found.

Both commenced proceedings against SERC alleging negligence on behalf of its servants and claiming damages, being the value of the bags and their contents lost. Parker claimed 24l 10s as the value of his bag and Gabell claimed 50l 16s. At trial, SERC argued that it had accepted the bags of both plaintiffs on the condition that it would not be responsible for the value of the bag if it exceeded 10l. Both Parker and Gabell denied having seen the notice hung in the cloakroom or read the back of the ticket. Parker said that he thought the ticket was a receipt and Gabell said he thought it was evidence of SERC having received the bag. At first instance, a jury found in favour of Parker and Gabell. SERC appealed to the Court of Appeal.

Legal issue

Were the juries correctly instructed by the judges that the questions for them to determine were:

- (1) whether Parker/Gabell read or were aware of the special condition upon which the article was deposited; and/or
- (2) whether Parker/Gabell, under the circumstances, was under any obligation, in the exercise of reasonable and proper caution, to read or to make himself aware of the condition.

Decision

On 25 April 1877, a majority the Court of Appeal (Mellish and Baggallay LJJ, Bramwell LJ dissenting) ordered a new trial on the basis that the jury had been misdirected by the judge in two respects. Firstly, Parker/Gabell were under no obligation to read the condition. Secondly, the second question left to the jury should have been whether SERC did that which was reasonably sufficient to give Parker notice of the condition.

According to Lord Justice Mellish:

... if in the course of making a contract one party delivers to another a paper containing writing, and the party receiving the paper knows that the paper contains conditions which the party delivering it intends to constitute the contract, I have no doubt that the party receiving the paper does, by receiving and keeping it, assent to the conditions contained in it, although he does not read them, and does not know what they are ... [However] in both the cases which have been argued before us, though the plaintiffs admitted that they knew there was writing on the back of the ticket, they swore not only that they did not read it, but that they did not know or believe that the writing contained conditions ...

Now, I am of opinion that we cannot lay down, as a matter of law, either that the plaintiff was bound or that he was not bound by the conditions printed on the ticket, from the mere fact that he knew there was writing on the ticket, but did not know that the writing contained conditions ...

Now the question we have to consider is whether the railway company were entitled to assume that a person depositing luggage, and receiving a ticket in such a way that he could see that some writing was printed on it, would understand that the writing contained the conditions of contract, and this seems to me to depend upon whether people in general would in fact, and naturally, draw that inference. The railway company, as it seems to me, must be entitled to make some assumptions respecting the person who deposits luggage with them: I think they are entitled to assume that he can read, and that he understands the English language, and that he pays such attention to what he is about as may be reasonably expected from a person in such a transaction as that of depositing luggage in a cloak-room. The railway company must, however, take mankind as they find them, and if what they do is sufficient to inform people in general that the ticket contains conditions, I think that a particular plaintiff ought not to be in a better position than other persons on account of his exceptional ignorance or stupidity or carelessness. But if what the railway company do is not sufficient to convey to the minds of people in general that the ticket contains conditions, then they have received goods on deposit without obtaining the consent of the persons depositing them to the conditions limiting their liability. I am of opinion, therefore, that the proper direction to leave to the jury in these cases is, that if the person receiving the ticket did not see or know that there was any writing on the ticket, he is not bound by the conditions; that if he knew there was writing, and knew or believed that the writing contained conditions, then he is bound by the conditions; that if he knew there was writing on the ticket, but did not know or believe that the writing contained conditions, nevertheless he would be bound, if the delivering of the ticket to him in such a manner that he could see there was writing upon it, was, in the opinion of the jury, reasonable notice that the writing contained conditions.

Significance

For contracts where one party gives to the other a document containing writing that is not signed by the other party, a condition contained in the writing will become an express term of the contract if reasonable notice was given of that condition. The question of whether reasonable notice of a condition has been given is a question of whether the notice given was such as would alert a reasonable person in the customer's position to the condition. This is a question of fact. Certain assumptions can be made about the characteristics of the reasonable person (such as that they can read and understand English and will pay an appropriate amount of attention to the writing on the ticket given the nature of the transaction) in determining what reasonable notice is required to be given.

Subsequent cases have confirmed that where a customer's special disability (e.g. illiteracy) is revealed at or prior to the time of contracting, then further steps may need to be taken to give reasonable notice of the condition to that particular customer.