

Hadley v. Baxendale

In the Court of Exchequer
9 Exch. 341 (1854)

[Operations at the plaintiff's mill were halted because of a broken crank shaft. The plaintiff ordered delivery of a new crank shaft from the defendant. The plaintiff's employee told the clerk that the mill was stopped and that a new shaft had to be delivered immediately. The clerk promised delivery by the next day. However, there was not a special contract indicating unique circumstances. Because of neglect the shaft was not delivered for several days. As a consequence, the mill remained stopped and the plaintiff experienced substantial lost profits.

Is the defendant liable for the plaintiff's losses? Are the damages foreseeable? The decision begins with a restatement of the facts by the court reporter. Some discussion follows and then the court decision.]

. . . At the trial before Crompton. J., at the last Gloucester Assizes, it appeared that the plaintiffs carried on an extensive business as millers at Gloucester; and that on the 11th of May, their mill was stopped by a breakage of the crank shaft by which the mill was worked. The steam-engine was manufactured by Messrs. Joyce & Co., the engineers, at Greenwich, and it became necessary to send the shaft as a pattern for a new one to Greenwich. The fracture was discovered on the 12th, and on the 13th the plaintiffs sent one of their servants to the office of the defendants, who are the well-known carriers trading under the name of Pickford & Co., for the purpose of having the shaft carried to Greenwich. The plaintiffs' servant told the clerk that the mill was stopped, and that the shaft must be sent immediately; and in answer to the inquiry when the shaft would be taken, the answer was, that if it was sent up by twelve o'clock any day, it would be delivered at Greenwich on the following day. On the following day the shaft was taken by the defendants, before noon, for the purpose of being conveyed to Greenwich, and the sum of 21. 4s. was paid for its carriage for the whole distance; at the same time the defendants' clerk was told that a special entry, if required, would be made to hasten its delivery. The delivery of the shaft at Greenwich was delayed by some neglect; and the consequence was, that the plaintiffs did not receive the new shaft for several days after they would otherwise have done, and the working of their mill was thereby delayed, and they thereby lost the profits they would otherwise have received.

On the part of the defendants, it was objected that these damages were too remote, and that the defendants were not liable with respect to them. The learned Judge left the case generally to the jury, who found a verdict with £25 damages beyond the amount paid into Court.

...

[Parke, B. The sensible rule appears to be that which has been laid down in France, and which is declared in their code - Code Civil, liv. iii. tit. iii. ss. 1149, 1150,

1151, and which is thus translated in Sedgewick (page 67): "The damages due to the creditor consist in general of the loss that he has sustained, and the profits which he has been prevented from acquiring, subject to the modification hereinafter contained. The debtor is only liable for the damages foreseen, or which might have been foreseen, at the time of the execution of the contract, when it is not owing to his fraud that the agreement has been violated.... ...

...

[Parke, B. Suppose, in the present case, that the shaft had been lost, what would the damage to which the plaintiffs would have been entitled?] The loss they had sustained during the time they were so deprived of their shaft, or until they could have obtained a new one. ... The recent decision of this Court, in *Waters v. Towers* (8 Ex. 401), seems to be strongly in the plaintiffs' favor. The defendants there had agreed to fit up the plaintiffs' mill within a reasonable time, but had not completed their contract within such time; and it was held that the plaintiffs were entitled to recover, by way of damages, the loss of profit upon a contract they had entered into with third parties, and which they were unable to fulfill by reason of the defendants' breach of contract.

[Parke, B. the defendants there must of necessity have known the consequence of their not completing their contract would be to stop the working of the mill. but how could the defendants here know that any such result would follow?] There was ample evidence that the defendants knew the purpose for which this shaft was sent, and that the result of its nondelivery in due time would be the stoppage of the mill; for the defendants' agent, at their place of business, was told that the mill was then stopped, that the shaft must be delivered immediately, and that if a special entry was necessary to hasten its delivery, such an entry should be made. The defendants must, therefore, be held to have contemplated at that time what in fact did follow, as the necessary and natural result of their wrongful act. ...

Whateley, Willes, and Phipson, in support of the rule (Feb. 2). ...

.... There was no special contract between these parties. a carrier has a certain duty cast upon him by the law, and that duty is not to be enlarged to an indefinite extent in the absence of a special contract, or fraud or malice. ... Here the declaration is founded upon the defendants' duty as common carriers, and indeed there is no pretence for saying that they entered into a special contract to bear all consequences of the non-delivery of the article in question. They were merely bound to carry it safely, and to deliver it within a reasonable time. The duty of the clerk, who was in attendance at the defendants' office, was to enter the article, and to take the amount of the carriage; but a mere notice to him, such as was here given, could not make the defendants, as carriers, liable as upon a special contract. Such matters, therefore, must be rejected from the consideration of the question. If carriers are to be liable in such a case as this, the exercise of a sound judgment would not suffice, but they ought to be gifted also with a spirit of prophecy. "... This therefore is a question of law, and the jury ought to have been told that these damages were too remote; and that in the absence of the proof of any other damage, the plaintiffs were entitled to nominal damages only: ... If the defendants should be held

responsible for the damages awarded by the jury, they would be in a better position if they confined their business to the conveyance of gold. They cannot be responsible for results which, at the time the goods are delivered for carriage, are beyond all human foresight. Suppose a manufacturer were to contract with a coal merchant or mine owner for the delivery of a boat load of coals, no intimation being given that the coals were required for immediate use, the vendor in that case would not be liable for the stoppage of the vendee's business for want of the article which he had failed to deliver: for the vendor has no knowledge that the goods are not to go to the vendee's general stock. Where the contracting party is shewn to be acquainted with all the consequences that must of necessity follow from a breach on his part of the contract, it may be reasonable to say he takes the risk of such consequences. If, as between vendor and vendee, this species of liability has no existence, a fortiori the carrier is not to be burthened with it. In cases of personal liability to passengers, the damage to which the sufferer has been held entitled is the direct and immediate consequence of the wrongful act.

Cur. adv. vult.

The judgment of the Court was now delivered by Alderson, B.

We think that there ought to be a new trial in this case; but, in so doing we deem it to be expedient and necessary to state explicitly the rule which the Judge, at the next trial, ought, in our opinion, to direct the jury to be governed by when they estimate the damages.

...

Now we think the proper rule in such a case as the present is this: - Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury, which would ordinarily follow from a breach of contract under these circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such breach of contract. For, had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case; and of this advantage it would be very unjust to deprive them... Now, in the present case, if we are to apply the principles above laid down, we find that the only circumstances here communicated by the plaintiffs to the defendants at the time the contract was made, were, that the article to be carried was the broken shaft of a mill, and that the plaintiffs were the millers of that mill. But how do these circumstances show

reasonably that the profits of the mill must be stopped by an unreasonable delay in the delivery of the broken shaft by the carrier to the third person? Suppose the plaintiffs had another shaft in their possession put up or putting up at the time, and that they only wished to send back their broken shaft to the engineer who made it; it is clear that this would be quite consistent with the above circumstances, and yet the unreasonable delay in the delivery would have no effect upon the intermediate profits of the mill. Or, again, suppose that, at the time of the delivery to the carrier, the machinery of the mill had been in other respects defective, then, also, the same results would follow. Here it is true that the shaft was actually sent back to serve as a model for a new one, and that the want of a new one was the only cause of the stoppage of the mill, and that the loss of profits really arose from not sending down the new shaft in proper time, and that this arose from the delay in delivering the broken one to serve as a model. But, it is obvious that, in the great multitude of cases millers sending off broken shafts to third parties by a carrier under ordinary circumstances, such consequences would not, in all probability, have occurred; and these special circumstances were here never communicated by the plaintiffs to the defendants. It follow, therefore, that the loss of profits here cannot reasonably be considered such a consequence of the breach of contract as could have been fairly and reasonably contemplated by both the parties when they made this contract. For such loss would neither have flowed naturally from the breach of this contract in the great multitude of of such cases occurring under ordinary circumstances, nor were the special circumstances, which, perhaps, would have made it a reasonable and natural consequence of such breach of contract, communicated to or known by the defendants. The Judge ought, therefore, to have told the jury, that, upon the facts then before them, they ought not to take the loss of profits into consideration at all in estimating the damages. There must therefore be a new trial in this case.

Rule absolute.

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Questions

1. The plaintiffs' representative told the clerk that it was essential the crank shaft be delivered as soon as possible. Why was this not sufficient notification to ensure liability?
2. Is it efficient for courts to hold individual's liable for unforeseen damages? Why or why not?
3. Had the transport company accepted liability for non-timely delivery how might this have affect the terms of the bargain?

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