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April 25.

[IN THE COURT OF APPEAL.]

PARKER *v.* THE SOUTH EASTERN RAILWAY COMPANY.GABELL *v.* THE SOUTH EASTERN RAILWAY COMPANY.*Railway Company—Bailment—Deposit of Property in Cloak-room—Ticket—Condition endorsed thereon—Knowledge of the Condition by Depositor.*

On the deposit of articles at the cloak-room at a railway station, a charge is made of 2*d.* for each, and the depositor receives a ticket, on the face of which are printed the times of opening and closing the cloak-room and the words "See back," and on the back there is a notice that the company will not be responsible for any package exceeding 10*l.* A placard upon which is printed in legible characters the same condition is also hung up in the cloak-room.

The plaintiff deposited his bag, of value exceeding 10*l.*, in the defendants' cloak-room, paid 2*d.*, and received a ticket. The bag was lost or stolen. In an action to recover its value the plaintiff swore that he took the ticket without reading it, imagining it to be only a receipt for the money paid for the deposit of the article, or as evidence that the company had received the article, that he did not read the condition at the back of the ticket, nor did he see the notice hung up in the cloak-room. The judge left two questions to the jury,—1. Did the plaintiff read or was he aware of the special condition upon which the article was deposited? 2. Was the plaintiff, under the circumstances, under any obligation, in the exercise of reasonable and proper caution, to read or to make himself aware of the condition? The jury answered both the questions in the negative, and judgment was directed for the plaintiff:—

Held, by Mellish and Baggallay, L.JJ., that there ought to be a new trial, on the ground that there had been a misdirection by the judge, inasmuch as the plaintiff could be under no obligation to read the condition; and that the second question left to the jury ought to have been, whether the company did that which was reasonably sufficient to give the plaintiff notice of the condition.

Held, further by Bramwell, L.J., that, on the above facts, it was a question of law, and that judgment ought to be entered for the defendants.

ACTIONS against the South Eastern Railway Company for the value of bags and their contents lost to the plaintiffs respectively by the negligence of the company's servants.

The plaintiff in each case had deposited a bag in a cloak-room at the defendants' railway station, had paid the clerk 2*d.*, and had received a paper ticket, on one side of which were written a number and a date, and were printed notices as to when the office would be opened and closed, and the words "See back." On the other side were printed several clauses relating to articles left by passengers, the last of which was, "The company will not be respon-

sible for any package exceeding the value of 10*l*." In each case the plaintiff on the same day presented his ticket and demanded his bag, and in each case the bag could not be found, and had not been since found. Parker claimed 24*l*. 10*s*. as the value of his bag, and Gabell claimed 50*l*. 16*s*. The company in each case pleaded that they had accepted the goods on the condition that they would not be responsible for the value if it exceeded 10*l*.; and on the trial they relied on the words printed on the back of the ticket, and also on the fact that a notice to the same effect was printed and hung up in the cloak-room. Each plaintiff gave evidence and denied that he had seen the notice, or read what was printed on the ticket. Each plaintiff admitted that he had often received such tickets, and knew there was printed matter on them, but said that he did not know what it was. Parker said that he imagined the ticket to be a receipt for the money paid by him; and Gabell said he supposed it was evidence of the company having received the bag, and that he knew that the number on it corresponded with a number on his goods.

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Parker's case was tried at Westminster on the 27th of February, 1876, before Pollock, B.; and Gabell's case was tried at Westminster on the 15th of November, 1876, before Grove, J. The questions left in each case by the judge to the jury were: 1. Did the plaintiff read or was he aware of the special condition upon which the articles were deposited? 2. Was the plaintiff, under the circumstances, under any obligation, in the exercise of reasonable and proper caution, to read or make himself aware of the condition?

The jury in each case answered both questions in the negative, and the judge thereupon directed judgment to be entered for the plaintiff for the amount claimed, reserving leave to the defendants to move to enter judgment for them.

In Parker's case the defendants moved to enter judgment, and also obtained from the Common Pleas Division an order nisi for a new trial, on the ground of misdirection. The order was discharged, and the motion was refused by the Common Pleas Division. (1)

(1) See 1 C. P. D. 618, where the words printed on the ticket are set out at length.

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The defendants appealed.

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In Gabell's case the defendants applied to the Common Pleas Division for an order nisi for a new trial on the ground of misdirection, but the Court refused to grant the order. The defendants then moved for judgment and also obtained from the Court of Appeal an order nisi for a new trial, on the ground of misdirection.

The cases were heard together.

Feb. 6, 7. *Benjamin, Q.C.*, and *Bremner*, for the defendants. The plaintiffs sue on an alleged contract to keep the goods safely, but there is no contract if one party means one thing and the other party means something else; there must be a consensus ad idem.

[BRAMWELL, J.A. Not so; one of the parties may so conduct himself as to lead the other to believe that there was a contract.]

A man cannot make such a claim saying that he took the ticket, but took care not to read what was printed on it though he knew that it related to the goods deposited. The plaintiff proposes to the company that they shall do something for him, and they answer, "There are our terms." He had often taken similar tickets, and knew that they had on them printed matter, and he knew that he must give back the ticket in order to get back his goods. If the porter had said "Read this," the plaintiff could not recover if he asserted merely that he had not read what was printed; and where is the difference? *Henderson v. Stevenson* (1) was not a similar case; there the passenger took the ticket in a hurry, and knew nothing about it. Besides, in that case the company were common carriers bound to take the passenger on terms fixed by law; but the company are under no obligation to keep a cloak-room, and they have an absolute right to prescribe the terms on which they will accept articles left there. They are not even warehousemen, for they will only take small articles for the convenience of passengers. It is absurd to hold that for a charge of 2*d.* a company ought to become liable to make good a loss of perhaps hundreds of pounds. *Harris v. Great Western Ry. Co.* (2) was a stronger case. A man is not compelled to read a contract in order to be

(1) Law Rep. 2 H. L., Sc. 470.

(2) 1 Q. B. D. 515.

bound by it. Here the plaintiff took the ticket, and that implies an assent. The ticket contains the terms of the contract, and the plaintiff cannot, by refusing to read it, force on the company a different contract: *Lewis v. McKee*. (1) The company has not acted so as to induce the plaintiff to believe that they would be liable: *Cornish v. Abington* (2); and if the porter has done so he has exceeded his authority. The verdict ought to be entered for the defendants, or if not, then a new trial should be directed.

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Prentice Q.C., and *D. Brynmôr Jones*, for Gabell. The question is whether a man is bound by the contents of a printed paper merely put into his hands. It could not be pretended that any one would be bound by the terms printed on a turnpike ticket or a theatre ticket. The plaintiff says he thought the ticket was a voucher for the goods, as it was, and if so, why should he read it? It is not a question of law, but one of common sense, to be left to the jury. The company were clearly bailees for hire, and as such are *primâ facie* liable, and it is for them to shew that they are not.

F. Pollock (*Prentice, Q.C.* with him), for Parker. Suppose that the company had put on the ticket that if the goods were not redeemed within twenty-four hours they would be forfeited, or could not be redeemed except on payment of 5*l.*; would that have bound the plaintiff? It is no answer that that would be unreasonable, if the ticket is said to constitute a contract; nor is a depositor obliged to know what would be reasonable. To say that he is at his peril obliged to read this ticket, is to say that the general law of bailments is so absurd that a bailor must expect special conditions. No one can be expected to know that a receipt or a mere voucher given in order to secure the return of the article to the proper person contains special conditions. The questions were rightly put to the jury, and the verdict ought to stand.

Bremner, in reply. If the companies are for 2*d.* to incur indefinite liabilities they will shut up the cloak-rooms. It is admitted that the terms specified on the ticket are reasonable, and it is needless to speculate on what would be the consequence if the terms were unreasonable. The depositor had plenty of time to read what was printed, and if he did not he must take the consequences.

Cur. adv. vult.

(1) Law Rep. 4 Ex. 58.

(2) 4 H. & N. 549; 28 L. J. (Ex.) 262.

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MELLISH, L.J. In this case we have to consider whether a person who deposits in the cloak-room of a railway company, articles which are lost through the carelessness of the company's servants, is prevented from recovering, by a condition on the back of the ticket, that the company would not be liable for the loss of goods exceeding the value of 10*l*. It was argued on behalf of the railway company that the company's servants were only authorized to receive goods on behalf of the company upon the terms contained in the ticket; and a passage from Mr. Justice Blackburn's judgment in *Harris v. Great Western Ry. Co.* (2) was relied on in support of their contention: "I doubt much—inasmuch as the railway company did not authorize their servants to receive goods for deposit on any other terms, and as they had done nothing to lead the plaintiff to believe that they had given such authority to their servants so as to preclude them from asserting, as against her, that the authority was so limited—whether the true rule of law is not that the plaintiff must assent to the contract intended by the defendants to be authorized, or treat the case as one in which there was no contract at all, and consequently no liability for safe custody." I am of opinion that this objection cannot prevail. It is clear that the company's servants did not exceed the authority given them by the company. They did the exact thing they were authorized to do. They were authorized to receive articles on deposit as bailees on behalf of the company, charging 2*d*. for each article, and delivering a ticket properly filled up to the person leaving the article. This is exactly what they did in the present cases, and whatever may be the legal effect of what was done, the company must, in my opinion, be bound by it. The directors may have thought, and no doubt did think, that the delivering the ticket to the person depositing the article would be sufficient to make him bound by the conditions contained in the ticket, and if they were mistaken in that, the company must bear the consequence.

The question then is, whether the plaintiff was bound by the

(1) The judgments of Mellish and Baggallay, L.J.J., were read by Bramwell, L.J.

(2) 1 Q. B. D. at p. 533.

conditions contained in the ticket. In an ordinary case, where an action is brought on a written agreement which is signed by the defendant, the agreement is proved by proving his signature, and, in the absence of fraud, it is wholly immaterial that he has not read the agreement and does not know its contents. The parties may, however, reduce their agreement into writing, so that the writing constitutes the sole evidence of the agreement, without signing it; but in that case there must be evidence independently of the agreement itself to prove that the defendant has assented to it. In that case, also, if it is proved that the defendant has assented to the writing constituting the agreement between the parties, it is, in the absence of fraud, immaterial that the defendant had not read the agreement and did not know its contents. Now 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. I hold therefore that the case of *Harris v. Great Western Ry. Co.* (1) was rightly decided, because in that case the plaintiff admitted, on cross-examination, that he believed there were some conditions on the ticket. On the other hand, the case of *Henderson v. Stevenson* (2) is a conclusive authority that if the person receiving the ticket does not know that there is any writing upon the back of the ticket, he is not bound by a condition printed on the back. The facts in the cases before us differ from those in both *Henderson v. Stevenson* (2) and *Harris v. Great Western Ry. Co.* (1), because 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, and we are to consider whether, under those circumstances, we can lay down as a matter of law either that the plaintiff is bound or that he is not bound by the conditions contained in the ticket, or whether his being bound depends on some question of fact to be

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determined by the jury, and if so, whether, in the present case, the right question was left to the jury.

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. I think there may be cases in which a paper containing writing is delivered by one party to another in the course of a business transaction, where it would be quite reasonable that the party receiving it should assume that the writing contained in it no condition, and should put it in his pocket unread. For instance, if a person driving through a turnpike-gate received a ticket upon paying the toll, he might reasonably assume that the object of the ticket was that by producing it he might be free from paying toll at some other turnpike-gate, and might put it in his pocket unread. On the other hand, if a person who ships goods to be carried on a voyage by sea receives a bill of lading signed by the master, he would plainly be bound by it, although afterwards in an action against the shipowner for the loss of the goods, he might swear that he had never read the bill of lading, and that he did not know that it contained the terms of the contract of carriage, and that the shipowner was protected by the exceptions contained in it. Now the reason why the person receiving the bill of lading would be bound seems to me to be that in the great majority of cases persons shipping goods do know that the bill of lading contains the terms of the contract of carriage; and the shipowner, or the master delivering the bill of lading, is entitled to assume that the person shipping goods has that knowledge. It is, however, quite possible to suppose that a person who is neither a man of business nor a lawyer might on some particular occasion ship goods without the least knowledge of what a bill of lading was, but in my opinion such a person must bear the consequences of his own exceptional ignorance, it being plainly impossible that business could be carried on if every person who delivers a bill of lading had to stop to explain what a bill of lading was.

Now the question we have to consider is whether the railway company were entitled to assume that a person depositing lug-

gage, 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.

I have lastly to consider whether the direction of the learned judge was correct, namely, "Was the plaintiff, under the circumstances, under any obligation, in the exercise of reasonable and proper caution, to read or to make himself aware of the condition?" I think that this direction was not strictly accurate, and was calculated to mislead the jury. The plaintiff was certainly under no obligation to read the ticket, but was entitled to leave it unread if

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he pleased, and the question does not appear to me to direct the attention of the jury to the real question, namely, whether the railway company did what was reasonably sufficient to give the plaintiff notice of the condition.

On the whole, I am of opinion that there ought to be a new trial.

BAGGALLAY, L.J. A railway company, in the conduct of their cloak-room business, become bailees for reward of the articles deposited with them for safe custody; and, as such, in the absence of any special contract constituted by the delivery and acceptance of a ticket or otherwise, are responsible to the depositors for the full value of the deposited articles, if unable to restore them when demanded. This clearly would be the nature of the contract if no ticket were delivered, as occasionally happens.

In the present cases the question for consideration is whether the ordinary contract of bailment, which would have resulted from the receipt by the company of the plaintiffs' property and the payment by the plaintiffs of the prescribed charges, has been modified by the delivery of the tickets which were admittedly accepted by the plaintiffs, though, as they allege, in ignorance of the purport or effect of the printed statements endorsed upon them. If the practice of issuing cloak-room tickets, containing statements of conditions intended to be binding on depositors, had become general, it might well be that a person depositing his property and accepting a ticket, even though himself ignorant of the practice, must be treated as aware of it, and as bound to ascertain whether any such conditions were stated on the ticket delivered to him; but no such practice has been shewn or even suggested in either of the present cases, nor does it, so far as I am aware, exist. The primary purpose of the ticket is to identify the articles deposited and the party entitled to reclaim them, but practically, and by reason of the recognised practice of not delivering the ticket until the prescribed charge has been paid, it becomes a voucher for the payment.

So far as these purposes are concerned, the depositor has no occasion to look at the ticket until he desires to reclaim his

property, and if the tickets were delivered for these purposes only, the ordinary contract of bailment would be in no respect modified by the delivery of them; and in the absence of any such general practice as that to which I have alluded, it appears to me that the depositor is *primâ facie* entitled to regard the ticket as delivered to him for these purposes only, and that he is in no way put upon inquiry whether the company have any further or ulterior object. But it is, of course, open to the company to shew, not only that they intended that the ticket, which was delivered to the depositor primarily for his own convenience and protection, should also indicate to him certain terms and conditions in favour of the company, by which he was to be bound, but also that he was aware of such intention at the time when he accepted the ticket and that he agreed to give effect to it; the onus of proof is, however, upon the company in respect of these matters. Of the intention of the company to modify the contract of bailment in the cases under consideration by limiting their liability, there can be no question. I also think that, if the plaintiffs were aware, or ought, for reasons which will be indicated presently, to be treated as being aware of the intention of the company at the time when they respectively received their tickets, and did not express their dissent, they must be regarded as having agreed to give effect to them.

The question then remains whether the plaintiffs were respectively aware, or ought to be treated as aware, of the intention of the company thus to modify the effect of the ordinary contract.

Now as regards each of the plaintiffs, if at the time when he accepted the ticket, he, either by actual examination of it, or by reason of previous experience, or from any other cause, was aware of the terms or purport or effect of the endorsed conditions, it can hardly be doubted that he became bound by them. I think also that he would be equally bound if he was aware or had good reason to believe that there were upon the ticket statements intended to affect the relative rights of himself and the company, but intentionally or negligently abstained from ascertaining whether there were any such, or from making himself acquainted with their purport. But I do not think that in the absence of

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any such knowledge or information, or good reason for belief, he was under any obligation to examine the ticket with the view of ascertaining whether there were any such statements or conditions upon it.

Whether the plaintiff had any such knowledge or information, or good reason for belief, is a question of fact to be determined by the evidence. Had the determination of these questions of fact in the cases under consideration rested with myself, I should, upon the evidence, have decided in favour of the plaintiffs in both cases; but having had the opportunity of reading the proposed judgments of both my colleagues, I feel the force of the observations made by them as to the directions given to the juries by the judges who tried the actions. I do not think that the second question was quite right in form, though I think that had it been put in the form suggested by Lord Justice Mellish, which appears to me to be the more correct form, the same result would have followed. It is possible, however, though I think hardly probable, that the juries were misled by the form of the questions, and, under all the circumstances, the best course to pursue will be, I think, to direct a new trial.

BRAMWELL, L.J. It is clear that if the plaintiffs in these actions had read the conditions on the tickets and not objected, they would have been bound by them. No point was or could be made that the contract was complete before the ticket was given. If then reading the conditions they would have been bound, it follows that had they been told they were the conditions of the contract and invited to read them, and they had refused, saying they were content to take them whatever they might be, then also they would be bound by them. So also would they be if they were so told, and made no answer, and did nothing; for in that case they would have tacitly said the same thing, viz., that they were content to take them, whatever they might be. It follows, further, that if they knew that what was on the tickets was the contract which the defendants were willing to enter into, they, the plaintiffs, would be bound, though not told they were the conditions; for it cannot make a difference that they were not told what by the hypothesis they knew already. We have it, then, that if the

plaintiffs knew that what was printed was the contract which the defendants were willing to enter into, the plaintiffs, not objecting, are bound by its terms, though they did not inform themselves what they were. The plaintiffs have sworn that they did not know that the printing was the contract, and we must act as though that was true and we believed it, at least as far as entering the verdict for the defendants is concerned. Does this make any difference? The plaintiffs knew of the printed matter. Both admit they knew it concerned them in some way, though they said they did not know what it was; yet neither pretends that he knew or believed it was not the contract. Neither pretends he thought it had nothing to do with the business in hand; that he thought it was an advertisement or other matter unconnected with his deposit of a parcel at the defendants' cloak-room. They admit that, for anything they knew or believed, it might be, only they did not know or believe it was, the contract. Their evidence is very much that they did not think, or, thinking, did not care about it. Now they claim to charge the company, and to have the benefit of their own indifference. Is this just? Is it reasonable? Is it the way in which any other business is allowed to be conducted? Is it even allowed to a man to "think," "judge," "guess," "chance" a matter, without informing himself when he can, and then when his "thought," "judgment," "guess," or "chance" turns out wrong or unsuccessful, claim to impose a burthen or duty on another which he could not have done had he informed himself as he might? Suppose the clerk or porter at the cloak-room had said to the plaintiffs, "Read that, it concerns you," and they had not read it, would they be at liberty to set up that though told to read they did not, because they thought something or other? But what is the difference between that case and the present? Why is there printing on the paper, except that it may be read? The putting of it into their hands was equivalent to saying, "Read that." Could the defendants practically do more than they did? Had they not a right to suppose either that the plaintiffs knew the conditions, or that they were content to take on trust whatever is printed? Let us for the moment forget that the defendants are a caput lupinum—a railway company. Take any other case—any case of money being

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paid and a paper given by the receiver, or goods bought on credit and a paper given with them. Take also the cases put by Byles, J., in *Van Toll v. South Eastern Ry. Co.* (1) Has not the giver of the paper a right to suppose that the receiver is content to deal on the terms in the paper? What more can be done? Must he say, "Read that?" As I have said, he does so in effect when he puts it into the other's hands. The truth is, people are content to take these things on trust. They know that there is a form which is always used—they are satisfied it is not unreasonable, because people do not usually put unreasonable terms into their contracts. If they did, then dealing would soon be stopped. Besides, unreasonable practices would be known. The very fact of not looking at the paper shews that this confidence exists. It is asked: What if there was some unreasonable condition, as for instance to forfeit 1000% if the goods were not removed in forty-eight hours? Would the depositor be bound? I might content myself by asking: Would he be, if he were told "our conditions are on this ticket," and he did not read them. In my judgment, he would not be bound in either case. I think there is an implied understanding that there is no condition unreasonable to the knowledge of the party tendering the document and not insisting on its being read—no condition not relevant to the matter in hand. I am of opinion, therefore, that the plaintiffs, having notice of the printing, were in the same situation as though the porter had said, "Read that, it concerns the matter in hand;" that if the plaintiffs did not read it, they were as much bound as if they had read it and had not objected.

The difficulty I feel as to what I have written is that it is too demonstrative. But, put in practical language, it is this: The defendants put into the hands of the plaintiff a paper with printed matter on it, which in all good sense and reason must be supposed to relate to the matter in hand. This printed matter the plaintiff sees, and must either read it, and object if he does not agree to it, or if he does read it and not object, or does not read it, he must be held to consent to its terms; therefore, on the facts, the judges should have directed verdicts for the defendants.

The second question left, in my opinion, should not have been

(1) 12 C. B. (N.S.) at p. 87; 31 L. J. (C.P.) 241.

left, and was calculated to mislead the jury. It might equally have been put if the plaintiffs had been told that the conditions of the contract were on the ticket, and had been asked to read them. It would then manifestly have been a question of law, and so it is now. Besides, by its terms it was calculated to mislead the jury. The question was, whether the plaintiff was under any obligation, in the exercise of reasonable and proper caution, to read the ticket. Obligation to whom? Not to himself, as people sometimes say, for there is no such duty, or if any, he may excuse himself from performing it. If it means whether a reasonably and properly cautious person might omit to read it, I say Yes. At least I hope so. Such a person might well take the matter on trust, but then he ought to be content to take the consequences of so doing. But he has no right, having omitted to inform himself, and having had the means of doing so, to make a claim which he might have fairly made had he had no such means of informing himself. The question possibly means "obligation to the defendants." That is, had the plaintiff a right to omit to do so, and then make his claim? I repeat that the same question might be put if he were told that the print contained the conditions of the contract, and then it would obviously be a question of law as it is now. The question is imperfect. The question whether of law or fact is, "Can a man properly omit to inform himself, being able to do so, and then justly claim, when he could not have claimed if he had informed himself?" The latter part of the question is left out. The authorities are in favour of this view: *Stewart v. North Western Ry. Co.* (1); *Van Toll v. South Eastern Ry. Co.* (2) There is the opinion of Willes, J., in *Lewis v. M'Kee* (3), and, lastly, the case of *Henderson v. Stevenson* (4). I need not say if I thought that that case supported the judgment I should defer to it, but I cannot understand how that can be supposed. The plaintiff there said that he had never looked at the ticket or seen the notice on it, no one having directed his attention to either, and on this the House proceeded. The Lord Chancellor says: "Your Lordships may take it as a matter of fact that the respondent was not aware of that which was printed on the back of the ticket." Here the

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(1) 3 H. & C. 135; 33 L. J. (Ex.) 199.

(3) Law Rep. 4 Ex. 58.

(2) 12 C. B. (N.S.) 75; 31 L. J. (C.P.) 241.

(4) Law Rep. 2 H. L., Sc. 470.

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plaintiffs knew there was printed matter, and must have known it concerned them. The Lord Chancellor adds: "The passenger receiving the ticket in that form, and without knowing of anything beyond, must be taken to have made a contract according to that which was expressed and shewn to him." I am of opinion, therefore, that the judgment should be reversed, and be given for the defendants. If not, though I think the question one of law, still, if it is of fact, it has not been left to the jury, and there should be a new trial. The possible question of fact is that set forth in the judgment of the Lord Justice Mellish, with a perusal of which he has favoured me. But I repeat I think it is a question of law. I also think the verdict against evidence, and that on that ground there should be a new trial. No one can read the evidence of the plaintiffs in this case without seeing the mischief of encouraging claims so unconscientious as the present.

Orders absolute for new trials.

Solicitor for Parker: *G. W. Digby.*

Solicitor for Gabell: *M. J. Pyke.*

Solicitor for the company: *W. R. Stevens.*

June 6.

[IN THE COURT OF APPEAL.]

GRANT AND OTHERS v. THE BANQUE FRANCO-EGYPTIENNE.

*Practice—Security for Costs—Rules of Court, 1875—Order LVIII., Rule 15—
 "Special circumstances."*

The fact that an appellant is a foreigner domiciled abroad with no assets in this country, is a "special circumstance" within Order LVIII., Rule 15, and entitles the respondent to security for costs of appeal from an interlocutory order.

THE verdict having passed for the defendants, the plaintiffs obtained an order for a new trial. The defendants appealed.

The plaintiffs applied for security for costs under Order LVIII., Rule 15.

The defendants were a French corporation, having their place of business in France, and had no assets in this country.

An affidavit by a French advocate was filed to the effect that,