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Utah Supreme Court

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7635

IN THE SUPREME COURT
of the
STATE OF UTAH

CHARLES S. WYATT (Civil No. 86172), AARON HALE (Civil No. 86173) and GLEN RENSHAW (Civil No. 86174) Consolidated,

Appellants,

vs.

WILLIAM M. BAUGHMAN, doing business as Skyway Flying Service,

Respondent.

Case No. 7635

APPELLANTS' REPLY BRIEF

FILED
OCT 1 5 ...
Clerk, Supreme Court, Utah

FRED L. FINLINSON,
Attorney for Appellants

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IN THE SUPREME COURT
of the
STATE OF UTAH

CHARLES S. WYATT (Civil No. 86172), AARON HALE (Civil No. 86173) and GLEN RENSHAW (Civil No. 86174) Consolidated, *Appellants,*		
vs.	}	Case No. 7636
WILLIAM M. BAUGHMAN, doing business as Skyway Flying Service, *Respondent.*		

APPELLANTS' REPLY BRIEF

Respondent's lengthy brief, appears to be designed for confusion, since it repeatedly speaks of matters immaterial to the real issue of the case.

If the respondent is to prevail in this case, the Supreme Court must of necessity reverse *Romney v. Covey Garage.* We quote again, with emphasis from that case:

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"There are numerous cases which hold that, after bailor proves the bailment and damage or loss, *the burden is on bailee to show that the damage or loss was NOT* due to his negligence and he stands the risk of non-persuasion on this point. * * We believe that the views expressed * * more nearly express the proper rule of law."

Again:

"* * The assumption may be indulged that theft or fire would not ordinarily occur but for negligence. At least the policy of the law demands that he who had the goods under his care *explain satisfactorily why they were stolen or damaged* just as the doctrine of res ipsa loquitur demands that he who had control satisfactorily explain the reason for the accident."

Again:

"Upon this showing the law *arbitrarily* raises a presumption of negligence which makes a prima facie case for the plaintiff sufficient, unless bailee *conclusively* proves due care, *to carry the case to the jury.* * * *The cases hold it would be unreasonable to require the bailor to prove negligence specifically when the bailee has exclusive possession of the facts and the means for ascertaining them."*

In other words our Supreme Court has decided that in cases like this, the bailee must show that the damage was *NOT* due to his negligence, that he explain satisfactorily *WHY* the goods were damaged, and must *CONCLUSIVELY* prove his own due care.

Respondent paraded numerous witnesses before the Court to testify that customarily he was a good house-

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keeper, but search the record as we may, there is no evidence showing that the damage was *NOT* due to his negligence (such as showing that lightning started the fire, a fire-bug lit the torch, or some other third party or third-factor was the efficient cause), or *WHY* or how the fire started or *WHAT* happened on the day of the fire. On the other hand, on cross-examination many actual acts of negligence or conditions reflecting negligence were shown to have been committed or to have existed at the time of the fire. The long parade of respondent's witnesses was designed only to confuse the issue and obscure the rule in the Covey case, and none of them gave any proof that respondent was not negligent on the day in question, or to prove *how* the fire started, or to prove *conclusively* that respondent exercised due care. The lower Court clearly erred in failing to direct a verdict in favor of plaintiffs.

As to the innuendoes of counsel for respondent that appellants' counsel acted in bad faith by asserting they had new evidence but failed to produce it at the trial, let these two facts be made clear:

(1) Appellants subpoenaed Waggoner to elicit the new evidence on rebuttal and ample new evidence of an important character was elicited on his cross-examination after respondent himself called him as a witness.

(2) That respondent's counsel, at the first trial, presented to the Court and jury a drawing of the respondent's hangar, significantly omitting a storeroom loaded with inflammables, the respondent owner of the hangar having testified that this drawing was an ac-

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curate drawing, the significantly missing storeroom having been discovered on cross-examination, not of the respondent owner, but of one of his employees, at the near end of the trial.

Repeating: In order to hold for the respondent in this case, the Court must of necessity reverse the Covey case, since a comparison of the facts in that case with those in this case brings into bold relief the greater strength of this case as compared with the Covey case and its weaker facts.

The case should, without question, be reversed and remanded with instructions to enter judgment for appellants for the respective stipulated values of the planes in question, or to grant a new trial.

Respectfully submitted,

FRED L. FINLINSON,
Attorney for Appellants

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Served the foregoing Appellants' Reply Brief upon Defendant and Respondent by mailing a copy thereof to Moreton, Christensen and Christensen, Judge Building, Salt Lake City, Utah, this .... day of October, 1951.

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Fred L. Finlinson
Attorney for Appellants

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