

HENRY F. COOMBS (SUPPLIANT).....APPELLANT;

1896

AND

\*Feb. 22.

HER MAJESTY THE QUEEN (RE- }  
SPONDENT)..... } RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

*Railway Co.—Railway ticket—Right to stop over.*

By the sale of a railway ticket the contract of the railway company is to convey the purchaser in one continuous journey to his destination; it gives him no right to stop at any intermediate station. *Craig v. Great Western Railway Co.* (24 U. C. Q. B. 509); *Briggs v. The Grand Trunk Railway Co.* (24 U. C. Q. B. 516); and *Cunningham v. The Grand Trunk Railway Co.* (9 L. C. Jur. 57; 11 L. C. Jur. 107) approved and followed.

APPEAL from a decision of the Exchequer Court of Canada (1), dismissing the suppliant's petition of right.

The suppliant, Coombs, on March 31st, 1893, was in Moncton, N.B., where he saw posted up a notice by the Intercolonial railway authorities containing the following: "Excursion return tickets will be issued on March 30th and 31st and April 1st, inclusive, at first-class single fare. Tickets are not good going after April 1st." Wishing to go to Chatham Junction he bought an excursion ticket which had printed on its face "good on date of issue only," and "no stop-over allowed." He did not read what was on the ticket, and his attention was not called to it when he purchased.

He started from Moncton on March 31st, and when he got to Harcourt, about half way to Chatham Junction, he left the train and stayed there all night. On

\*PRESENT :—Sir Henry Strong C.J., and Taschereau, Sedgewick, King, and Girouard JJ.

(1) 4 Ex. C. R. 321.

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resuming his journey next day his ticket was refused by the conductor, and refusing to pay his fare again he was ejected from the train, for which he claims damages from the crown. His petition of right was dismissed by the judgment of the Exchequer Court, from which he appeals.

*Orde* for the appellant. The advertisement of the issue of excursion tickets at a reduced rate is a feature in the contract made with every purchaser of a ticket, and its terms are binding on the crown. *Parker v. The South Eastern Railway Co.* (1); *Watkins v. Rymill* (2); *Richardson v. Rowntree* (3).

The attention of the suppliant was not drawn to the conditions on the ticket, and he is not bound by them. *Bate v. Canadian Pacific Railway Co.* (4).

*Newcombe* Q.C., Deputy Minister of Justice, for the respondent, was not called upon.

The judgment of the court was delivered by :

THE CHIEF JUSTICE.—I am not prepared to over-rule cases of authority decided by the courts in Ontario which have stood unimpeached for many years, and are decisions of very able judges. In *Craig v. The Great Western Railway Co.* (5), where the right of a traveller to stop over on an ordinary ticket was in question, Draper C.J. says :

Our conclusion is that the defendants' contract bound them to convey the plaintiff in one continuous journey from the Suspension Bridge to Detroit, giving him the option of taking any passenger train of the defendants from the point of commencement, and entitling him, if the train in which he started did not go the whole distance mentioned in his ticket, to be conveyed the residue of that distance in some other train of the defendants, the whole journey to be completed within twenty days from the date of the ticket ; and that the contract

(1) 2 C.P.D. 416.

(2) 10 Q.B.D. 178.

(3) [1894] A.C. 218.

(4) 15 Ont. App. R. 388 ; 18  
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(5) 24 U. C. Q. B. 509.

did not confer on the plaintiff a right to stop at every or any intermediate station, though within the limited twenty days.

In *Briggs v. The Grand Trunk Railway Co.* (1) in which the same question came up on demurrer, the same learned Chief Justice says :

The sole question presented is the right of the plaintiff upon this contract to break the journey into two or more parts, resuming and completing it at his own convenience. I have already expressed my opinion on this point in the case of *Craig v. The Great Western Railway Co.* (2), and shall not now further discuss it.

In the case of *Cunningham v. The Grand Trunk Railway Co.* (3), the Superior Court of Lower Canada had in the first instance decided the other way, on the ground that although it was the custom of the railway company to insist on a continuous journey they had recognized the act of their conductors in allowing passengers to infringe this rule, but this judgment was unanimously reversed by the Court of Queen's Bench, thus bringing the law of Lower Canada into accord with the Ontario decisions.

So there is perfect unanimity of opinion as to the law on this question so far as the two old provinces of Canada are concerned, and (speaking for myself only) I would not presume to overrule the decisions referred to. Moreover, on principle, apart from authority, when a person buys a ticket it is reasonable that it should only give him a right to a continuous journey, and in addition, in this case, the plaintiff had a plain warning on the ticket itself "good on date of issue only," in the face of which he should never have brought this action. The case is very different from that of *Bate v. The Canadian Pacific Railway Co.* (3), where there were very good reasons why the purchaser should not be bound by the conditions of the ticket she

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(1) 24 U.C.Q.B. 516.

(3) 9 L.C. Jur. 57 ; 11 L.C. Jur.

(2) 24 U.C.Q.B. 509.

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(3) 15 Ont. App. R. 388 ; 18 Can. S. C. R. 697.

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bought, inasmuch as being unable to read from defective eyesight, she asked the ticket issuer for an explanation of the undertaking she was required to sign, and was told by him that it had reference to a matter entirely different from the condition relied on by the company. We therefore do not call upon counsel for the respondent. The judgment of the Exchequer Court was quite right, and the appeal should be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant: *McKeown, Barnhill & Chapman.*

Solicitor for the respondent: *J. A. Belyea.*

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