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THE GRAND TRUNK RAILWAY COMPANY OF CANADA (DEFENDANTS) ..... APPELLANTS;

AND

JOHN A. BEAVER (PLAINTIFF) .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Railway Co.—Passenger—Purchase of ticket by—Production of ticket to conductor—Refusal to produce—Ejectment from train—Liability of company—General Railway Act, 51 *Vic. c.* 29 (*D*), *secs.* 247 *and* 248.

By sec. 248 of the General Railway Act (51 V. c. 29), any passenger on a railway train who refuses to pay his fare may be put off the train.

Held, reversing the decision of the Court of Appeal, Fournier J. dissenting, that the contract between the person buying a railway ticket and the company on whose line it is intended to be used implies that such ticket shall be produced and delivered up to the conductor of the train on which such person travels, and if he is put off a train for refusing or being unable so to produce and deliver it up the company is not liable to an action for such ejectment.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment of the Queen's Bench Division (2) in favour of the plaintiff.

The only question to be decided by this appeal, is whether or not a passenger on a railway train who has purchased a ticket, but has lost or mislaid it, can be lawfully put off the train under the provisions of the Railway Acts of Canada and the act of incorporation of the Grand Trunk Railway Co. for refusing to produce and deliver up such ticket to the conductor. The Court of Appeal affirmed the decision of the Divisional

*PRESENT :—Fournier, Taschereau, Gwynne, Sedgewick and King JJ.

(1) 20 Ont. App. R. 476. (2) 22 O.R. 667.

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Court which maintained the passenger's right of action for being ejected.

The facts of the case and the statutes are set out in the judgment of Mr. Justice Gwynne.

McCarthy Q.C. and *Nesbitt* for the appellants. In construing an act of Parliament its scope and the purposes for which it was passed are to be considered; *In re Anglesea Colliery Co.* (1); and if these defendants are liable sec. 248 of the Railway Act could not operate.

The American decisions are strongly against the plaintiff. *Chicago and Alton Railroad Co.* v. *Willard* (2); *Hibbard* v. *New York and Erie Railroad Co.* (3); *Crawford* v. *Cincinnati, etc., Railroad Co.* (4). And see *Duke* v. *The Great Western Railway Co.* (5).

DuVernet for the respondent. The defendants contracted to carry the plaintiff to Caledonia and have failed to fulfil their contract. See *Butler* v. *The Manchester, etc., Railway Co.* (6), on which the Court of Appeal relied; *Henderson* v. *Stevenson* (7); *Maples* v. *New York, etc., Railroad Co.* (8); *The Queen* v. *Caister* (9).

As to the liability of the defendants for the conductor's acts see Ferguson on Rights and Duties of Railways (10).

McCarthy Q.C. in reply. In *Butler* v. *Manchester, etc., Railway Co.* (6) the only penalty for not producing a ticket was payment of fare from the nearest station, and the conductor ejected the passenger. That case is distinguishable from this where the statute expressly authorizes ejectment.

(1) 1 Ch. App. 559.
(2) 31 Ill. App. R. 435.
(3) 15 N.Y. 455.
(4) 26 Ohio 580.
(5) 14 U.C.Q.B. 369.
(6) 21 Q.B.D. 207.
(7) L.R. 2 Sc. App. 470.
(8) 38 Conn. 557.
(9) 30 U.C.Q.B. 247.
(10) P. 201.

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FOURNIER J.—I am of opinion that this appeal should be dismissed.

TASCHEREAU J.—I would allow this appeal for the reasons given by Osler J. in his dissenting opinion. The following United States cases support that view of the case :—

Chicago & Alton Railroad Company v. *Willard* (1). The Illinois statute provides "that if any passenger on any railroad, car or train shall refuse upon reasonable demand to pay his fare, or shall etc. (relating to disorderly conduct) it shall be lawful for the conductor of the train to remove or cause to be removed such passenger from the train." In this case, the facts were almost identical with those in the present.

In *Hibbard* v. *New York and Erie Railroad Co.* (2) it was held that a passenger who had once exhibited his ticket and refused to do so again when requested by the conductor might be put off the train.

In *Crawford* v. *The Cincinnati Hamilton and Drayton Railroad Co.* (3) it was held that the purchaser of a non-transferable commutation ticket who had lost it, and refused on account of such loss to pay his fare upon the train, could not maintain an action of tort against the company to recover damages for being ejected by the conductor in compliance with a rule requiring him to do so in case of non-production of a ticket and refusal to pay fare.

To the same effect is *Shelton* v. *The Lake Shore and Michigan Southern Railway Co.* (4).

Also *Louisville and Nashville Railroad Co.* v. *Fleming* (5). The court in its judgment quotes from and adopts the language used in *Frederick* v. *Marquette, etc., Railroad Co.* (6) :

(1) 31 Ill. App. R. 435.
(2) 15 N.Y. 455.
(3) 26 Ohio 580.
(4) 29 Ohio 214.
(5) 18 Am. & Eng. Cases 347.
(6) 37 Mich. 342.

There is but one rule which can safely be tolerated with any decent regard to the rights of railroad companies and passengers generally. As between the conductor and passenger, and the rights of the latter to travel, the ticket produced must be conclusive evidence, and he must produce it when called upon as the evidence of his right to the seat he claims.

In *Jerome* v. *Smith* (1) Wheeler J., in delivering the judgment of the court, says at page 234:

Having lost his ticket he was called upon by the proper conductor to pay his fare. He had not any ticket or cheque to pay it with, and refused to pay it in money, consequently there was a refusal to pay it at all and the conductor rightfully expelled him from the train.

In *Haley* v. *Chicago and North-western Railway Co.* (2), where an intoxicated man was forcibly ejected from a train upon failing to show a ticket or to pay fare, and was killed, it was held that he was rightly ejected.

GWYNNE J.—This case has proceeded in the courts below upon the authority of *Butler* v. *Manchester & Sheffield Railway Co.* (3), which case, as has been ably pointed out by Mr. Justice Osler in his judgment in the Court of Appeal for Ontario, has no application in the circumstances of the present case. Judgments of the courts in England upon cases arising there upon statutes wholly different in terms from the statutes of the Dominion of Canada affecting the same subject matter cannot have any binding effect upon the courts in this country in cases arising upon the statutes in force here. In *Butler* v. *The Manchester & Sheffield Railway Co.* (3) there was no statute authorizing the conductor of a railway train to put a passenger off the train either because of non-payment of his fare to the conductor or for non-production of a ticket.

The company were empowered by statute to make by-laws for regulating their passenger traffic. They

(1) 48 Vt. 230. (2) 21 Iowa 15.
(3) 21 Q.B. D. 207.

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did make such by-laws among which they enacted as follows :—

No passenger will be allowed to enter any carriage used on the railway unless furnished by the company with a ticket specifying the class of carriage and the stations for conveyance between which the ticket is issued.

Every passenger shall show and deliver up his ticket to any duly authorized servant of the company when required to do so for any purpose, and any passenger travelling without a ticket or failing or refusing to deliver up his ticket as aforesaid shall be required to pay the fare from the station whence the train originally started to the end of his journey.

And it was held that this by-law did not authorize the conductor to put a passenger off a train who did not produce a ticket authorizing him to travel on the train and who excused himself by the allegation that he had purchased a ticket but had lost it, for the by-law had imposed in such a state of facts an obligation only upon the passenger to pay the fare from the place whence the train had originally started to the place of his destination, and therefore that putting the passenger off the train was an actionable wrong. Now in the present case it is true that the Grand Trunk Railway Company, ever since their incorporation in 1852, have had power to make by-laws regulating the traffic on their railway; and they have done so, but there is among them no by-law in relation to the particular subject under discussion nor, as the company contend, is there any necessity for such a by-law inasmuch as their case is, as they contend, provided for by statute. As far back as 1851 the General Railway Clauses Act, 14 & 15 Vic. ch. 51 which is incorporated with the Grand Trunk Railway incorporation act, 16 Vic. ch. 37, in its 21st sec. subsec. 1, which is incorporated into the Consolidated Railway Act, 51 Vic. ch. 29, as sec. 247 of that act, enacted as follows :—

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Every servant of the undertaking employed in a passenger train or at stations for passengers shall wear upon his hat or cap a badge which shall indicate his office, and he shall not without such badge be entitled to demand or receive from any passenger any fare or ticket or to exercise any of the powers of his office, nor meddle or interfere with any passenger or his baggage or property.

And in the sixth subsection of the same sec. 21, which is incorporated as sec. 248 of the Railway Act 51 Vic. ch. 29, it was enacted that:—

Passengers refusing to pay their fare may by the conductor of the train and the servants of the company be, with their baggage, put out of the cars using no unnecessary force at any usual stopping place or near any dwelling house as the conductor shall elect, first stopping the train.

The statute law which the defendants invoke in their defence was enacted as far back as 1851 and has ever since continued in force without any alteration in its terms and must be construed now, appearing as it does *verbatim et literatim* in the Railway Act of 1888 sections 247 and 248, precisely as it would have been construed immediately after the first passing of the act in 1851, that is to say, having regard to the circumstances and condition of the country and the ordinary practice of railway companies in their first institution in the province and which has continued to the present day in relation to the collection of the fares of passengers travelling on railways—the practice being for passengers to pay their fares to the conductors on the trains either in money or by handing to him a ticket purchased by the passenger before entering the train. In modern times the purchasing tickets before entering the train is more general than it formerly was but it is still quite optional with passengers to purchase a ticket for the purpose of being delivered to the conductor on the train as and for the passenger's fare, or to pay the fare in money to the conductor. It is in relation to this state of things so existing at the time of

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the passing of the act that we must construe the provisions of the law invoked by the defendants. That law, for the security of the passenger, enacts that no person on a passenger train shall be entitled to receive or demand from any passenger any fare, or ticket, unless he shall wear a badge indicating his office. This section plainly implies a dealing by the legislature with a practice well known to exist of the companies, through some servant of theirs, collecting upon the trains when in course of travelling on the railway the fares of passengers either in money or in tickets, if any there should be, authorizing the holder to travel on the train upon which he should produce it. Then for the protection of the companies the statute enacts that it should be lawful for the conductor of a train of cars to put off the train a passenger refusing to pay his fare. It is obvious that this refusal spoken of in the statute is a refusal to pay the fare to the conductor the person recognized by the statute as the person authorized to collect the fares of all passengers travelling upon the train of which he is conductor and who for such refusal is empowered to put the passenger off the train. Now a passenger may pay his fare to the conductor in money or in a ticket or *bon* issued by the company as "good" for the fare if used of the date for which it is issued; but to avoid being in the position of a person refusing to pay his fare to the conductor the passenger must upon demand by the conductor deliver to him either money or such a *bon* in satisfaction of his fare for being conveyed upon that train. The conductor of any passenger train is, in a plain, common sense understanding of the terms of the statute, the person responsible for the collection of the fares of all passengers upon his train and the person to be satisfied of such payment either in money or by the production of a ticket allowing the person producing it to travel on the train of which he

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is the conductor. The judgment appealed from is to the effect that this is not so, but that when a railway company issues a ticket to a purchaser thereof for a passage on a particular train such ticket constitutes a contract between the purchaser and the company that the company will carry the purchaser upon such train, and that they must do so whether he produces the ticket to the conductor or not; and that in case even of his refusal to produce to the conductor or to pay his fare in money to him he cannot under the terms of the statute be put off the train but must be carried to whatever place upon the railway to which the train by which he is travelling goes that he may select as the point of his destination. In short that the conductor is a wrong doer, and the company responsible for his wrong, if he should put a passenger off his train who excuses himself for not paying the conductor his fare in money by the simple allegation that he had purchased a ticket which authorized him to travel upon the train on which he was but that he had forgotten to bring it with him—or that he had lost it—or that he had destroyed it—or that he had it in his pocket but would not produce it; such a construction would render the statute absolutely inoperative.

But let us consider what is the true nature of the contract involved in the ticket which the plaintiff had purchased, and which he had not with him, or if he had did not produce, when on the train from which he was put off.

It was upon its face declared to be:

> Good only for a continuous trip from Detroit to Caledonia until October 14, 1892.

Now, construing the contract evidenced by that ticket in the language of Lord Esher in *Butler* v. *The Manchester and Sheffield Railway Co.* (1) as implying only such terms as were clearly and obviously in the contem-

(1) 21 Q. B. D. 207.

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plation of the parties, can it be doubted for a moment that both parties had in contemplation what had been the practice and user ever since the introduction of railways into Canada, without ever a doubt being entertained upon the point, namely, that the ticket was purchased by the purchaser and was issued by the company for the sole purpose of being produced to the conductor of the train upon which the purchaser should travel upon the faith of it, to be taken up by such conductor as and for the fare of the purchaser for his being carried upon such train, and upon the thorough understanding and intent that, unless so produced, it was utterly valueless and good for nothing? It was only when so produced within the period mentioned on the ticket that it was to be, or could be, good for the continuous trip also mentioned on the ticket. The contract simply was to convey the purchaser upon one continuous trip from Detroit to Caledonia (up to the 14th October, 1892) upon any train of the company travelling between those two places upon which the purchaser should travel, and when called upon for his fare should produce and deliver up the ticket to the conductor of the train as and for such fare.

No other construction of the contract is admissible, and this being the plain, sensible construction of the contract the plaintiff, upon the facts in evidence, was, when called upon for his fare by the conductor, in the same position precisely as if he had never purchased the ticket, and not having paid his fare to the conductor was, in the terms of the provision of the statute in that behalf, liable to be put off the train by him.

In 1857, in *Duke* v. *The Great Western Railway Co.* (1), a precisely similar question arose upon the pleadings under an act relating to the Great Western Railway 16 Vic. chap. 99, the twelfth section of which (the

(1) 14 U.C.Q.B. 369.

Great Western Railway not being subject to the provisions of the general Railway Act of 1851, was similar to the above provisions extracted from 14 & 15 Vic. chap 51. The late Chief Justice Sir John B. Robinson, delivering judgment in that case, makes use of language precisely applicable to the present case. He says there:

> Mrs. Duke had paid for a ticket, and got it. Yet we must know what every one else knows, that still, after such payment, each passenger has to account for his passage to the conductor, in effect to pay him, for the company does not know to what person by name tickets are issued, nor does the officer that issues them at the station know. He only exchanges tickets for money without any reference to the person paying, and the system can only be carried out so as to prevent fraud by its being considered that the reckoning between the individual and the company takes place when the conductor goes round and receives payment from every person he sees there, taking money from those who have no ticket, and receiving tickets as money from those who have procured them by paying at the station.

This practical common sense understanding of the statute, as here expressed, has never been questioned, that I am aware of, until the decision in the present case now under consideration in appeal. It was doubtless in view of the facts and circumstances above treated by the learned chief justice, as being in the knowledge of every one, that the sections extracted from 14 & 15 Vic. chap. 51 were enacted, and were re-enacted in 22 Vic. chap. 66, secs. 95 and 106; and again in the Railway Act of 1868, 31 Vic., chap. 68, sec. 20, subsecs. 1 and 12; and again in the Railway Act of 1879, 42 Vic. chap. 9, sec. 25, subsecs. 1 and 12; and again, in 1886, in chap. 109 of the Revised Statutes of Canada, sec. 25, subsecs. 1 and 12; and again, lastly, in 1888, in 51 Vic. ch. 29 sections 247 and 248. In the courts of the United States where the practice as to the mode of issuing and collecting tickets in payment of fares is identical with that existing in Canada the law is laid

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down in the same manner. In one of them, *Frederick v. The Marquette Railroad Co.* (1), the court pronouncing judgment say :—

It is within the common knowledge and experience of all travellers that the uniform and perhaps the universal practice is for all railroad companies to issue tickets to passengers with the places designated thereon from whence and to which the passenger is to be carried—and that these tickets are presented to the conductor or person in charge of the train and that he unhesitatingly accepts such tickets.

And again :—

There of course will be cases where a passenger who has lost his ticket, or where through mistake a wrong ticket has been issued to him, will be obliged to pay his fare a second time.

And again :—

There is but one rule which can safely be tolerated with any decent regard to the rights of railroad companies and passengers generally. As between the conductor and passenger and the right of the latter to travel the ticket produced must be conclusive evidence and he must produce it when called upon as the evidence of his right to the seat he claims.

In the acts of the state of New York 1850, ch. 140 section 35, is a provision in language so identical with that of subsection 6 of section 21 of 14 & 15 Vic. ch. 51 that the latter seems to have been taken from the former. And in *Willets* v. *The Buffalo and Rochester Railroad Co.* (2), the Supreme Court of the state of New York, with reference to that statute, say :—

It is however argued that as the fare has been paid to Buffalo the act of the conductor cannot be justified (for putting off the train before reaching Buffalo a passenger who neither produced a ticket or paid the fare in money). Our attention has been directed to a provision of the general railroad act of 1850 which makes it lawful for a conductor if a passenger refuses to pay his fare to put him and his baggage off the cars.

And again :—

Can it be maintained that the company and its servants are bound to know whether the particular individual has paid his fare? This under the present mode of travelling would be impossible.

(1) 37 Mich. 343. (2) 14 Barb. 590.

In another case *Townsend* v. *The New York Central Railroad Co.* (1), it was held by the Court of Appeal for the state of New York that the conductor of a train is not bound to take the word of a passenger that he had purchased a ticket showing his right to a passage on that train. Indeed it stands to reason and common sense that nothing but the production of a ticket to the conductor on the train upon which a passenger is travelling will fulfil the purpose for which the ticket was issued, namely, to be delivered up to the conductor of the train which the passenger enters to be carried upon the faith of his ticket which when so produced operates as a payment to the conductor of the passenger's fare for his being carried on that train.

The only question in the present case is whether the facts in evidence bring the case within the purview of the statute which has equal, if not greater, binding effect than a by-law, rule or regulation of the company in like terms would have, and for the reasons given I am of opinion, both upon principle and authority, that they do, and that therefore the appeal should be allowed with costs and the judgment of Mr. Justice Rose restored.

SEDGEWICK and KING JJ. concurred.

Appeal allowed with costs.

Solicitor for appellants: *John Bell.*

Solicitor for respondent: *V. Mackenzie.*

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(1) 56 N.Y. 295.