

1891

# Railroad Tickets

Ernest G. Gould  
*Cornell Law School*

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Thesis.

RAILROAD TICKETS.

By

Ernest G. Gould,

Cornell University School of Law.

1891.

Railroad Tickets.

The rights, duties and obligations of the Common Carrier have been time and again <sup>set forth</sup> in the many treatises upon Bailments and Common Carriers, or works written especially upon railroad law. It would therefore seem that nothing could be written which would in any way add to the already voluminous literature upon the subject. Yet few if any have ever written considering the true legal status of a ticket and the rights, duties and obligations of the carrier as viewed from a legal standpoint by a holder thereof. There are principles of the law of contracts frequently overlooked in purchasing the ticket; and many of the valuable privileges of passengers, as evidenced by recent judicial decisions, have not as yet been digested by the text book writers, but left in the current reports to be sought after by those to whom such information is or may be of interest or value.

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These circumstances will, I think, suggest that it is the intention of the author to briefly compile, digest and classify, a few of the general principles of law relating to the subject already announced. They will also suggest to the reader the argument to be pursued and indicate the points about to be presented.

Following then this line of thought we shall in subsequent pages reach, inspect and pass these points: (1) The Legal Status of a Railroad Ticket; (2) The Contract which it Evidences; (3) Who may become Purchasers Thereof; and Passengers Thereupon; (4) Obligations of the Carrier of Passengers; Their Duties; (5) Rights of Passengers; (6) Trespassers Distinguished from Passengers and rights of Ejectment. ....

The Legal Status of a Railroad Ticket.

Persuant to the analization of our subject as above we are now about to consider the legal status of a railroad ticket.

The ticket has always been regarded in legal contemplation as a token, reciept or voucher signifying that the holder is rightfully on the train and as evi-

dence to the railroad officials that the holder is entitled to all the rights and privileges of a passenger. It is a receipt for the payment of fare. In 15 N. Y., 455 we find the language used by Mr. Justice Brown: "The ticket is the property of the railroad company and is a part of the means by which it conducts its business. It is delivered to the passenger to be held by him temporarily, for a special purpose, and who, to that extent, acquires a special property in it. When the journey is ended or about to end it is to be redelivered to the conductor. It serves a threefold purpose: It is evidence in the passenger's hands that he has paid his fare and has a right within the cars; It insures the payment of the passage money by all who take seats; and when it is redelivered to the company it becomes a voucher in its hands against the office or agent who issued it, in the adjustment of its accounts!"

The contract of carriage exists apart from the ticket but the ticket evidences to all whom it may concern that such contract has been in part made. A person buying a ticket purchases in a limited sense a right to travel and the right thus secured is not a mere

license but a contractual right and hence is irrevocable. "Upon payment of his passage money and obtaining a general receipt, or passenger ticket, from an office for his conveyance to a designated point upon the carrier's line, the passenger is in either case entitled to present his receipt or ticket for his passage at any reasonable time upon any outgoing regular means of public conveyance of the carrier, and demand the execution of the contract on his part." 11 Ohio State, 457.

These considerations logically lead to a few remarks upon the second division of the subject which is as to the nature of the contract which exists between passenger and carrier.....

#### The Contract which the Ticket Evidences.

As every contract originates in the offer and acceptance, they are to be looked at in considering the contract made with the carrier of which the ticket when it is delivered is evidence.

The contract may be formed before the issue and delivery of a ticket as will be shown hereafter; but at this point and in this place let us consider the offer.

The offer is a public one made to all the world and like any other becomes a binding contract if it is

accepted before it is retracted. It is made by the railroad company and is partly express and partly implied. The express part of the offer consists in statements contained in the announcements, advertisements, timetables and representations of specially authorized agents of the carrier. Oral negotiations preceding the purchase of the ticket, if within the general scope of the authority of such agent are held to be valid. So also are terms written or printed upon the ticket which are brought to the notice of the acceptor before purchase. But advertisements as to the time of running trains are revocable if made within certain reasonable limitations, even as against those who have purchased tickets. If the train fails to go at the appointed hour for the mere convenience of the railroad company or a portion of its passengers, one who presents himself at the advertised hour, demanding passage is not to be bound by this change unless he has had reasonable notice of it. 14 Allen, 433.

The implied part of the offer consists in general and special customs of the carrier and in such other

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elements as the courts have decided were reasonably within the minds of the parties, or imputable to them by law, at the time of the formation of the contract. These implications are almost infinite in number and will be more fully indicated when we come to speak of the obligations of the common carrier and the rights and duties of passengers.

The consideration for this contract is the payment of fare which may be made in money, services or other things of value in the eye of the law.

There may be terms of the offer which are not brought to the notice of the acceptor, and the courts for a long time were not a little troubled in solving the problem arising thereupon.

Before a person disposes of rights which would at common law attach to an open contract he should have fair warning of the fact. Where such conditions are invisible and unknown the contract must be regarded as absolute upon its face. Such a contract is made independently of and antecedent to the issuing of the ticket and it cannot be varied by what is on the back or front

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of the ticket; the effect of which would be that any special terms must be effectually noted before the ticket is issued. If not called to the attention of the acceptor until after the contract is made and the ticket issued, there is no consideration for them and they are wholly inoperative in so far as they are part of the contract.

The English case of Henderson v Stephenson is a leading one upon this point. In that case, the question being as to the validity of conditions printed upon the ticket which the purchaser had never read, the court held that the ticket was a contract upon its face notwithstanding the terms.

The plaintiff could not be held to have assented, "to a term which he had not seen and of which he knew nothing, and which was not in any way ostensibly connected with that which was printed or written upon the face of the contract presented to him".

But where terms are known to exist and are not read and one is placed, by the words "see back" or those of similar import, upon his guard or inquiry, a different case is presented. For in such a case the acceptor is

bound by them and they become conditions of his contract the same as if his attention had been called to them by the carrier or his agent and he had read them. The question in such cases is: Have the terms of the offer been fully communicated to the acceptor, and the tendency of the judicial decision is towards a general rule, that: If a man accepts a document which purports to contain the terms of an offer he is bound by all the terms though he may not choose to inform himself of their tenor or even of their existence. Anson on Contracts P.18; 10 Q. B. D., 178; 5 C. P. D., 1. Yet it is possible that the terms thus communicated and accepted may be declared by the courts void on grounds of public policy, as where a person by this method releases the carrier from all liability whatsoever. It has never been deemed just in this country to set off public benefits against private wrongs and to sacrifice a ~~private~~ <sup>few</sup> number of persons for the infinite good of the body politic. It is deemed equitable and just that the parties should approach each other with something like equality of power; for where there is no option there should be no bargain.

The relation of carrier and passenger may exist however, before entry into the cars <sup>or</sup> ~~and~~ payment of fare. Being in the waiting room, waiting to take the cars; or putting one's self in readiness to be carried is sufficient to constitute the relation of carrier and passenger. The reason for this is that a depot is a quasi public place and that a person coming there to take the train is rightfully there by invitation of the carrier. And this not on grounds of any contractual relation but for reasons founded in common sense and public policy.

It may be further stated in speaking of the nature of the contract which exists between carrier and passenger that by the contract persons do not contract simply for shipment and carriage but for comfort, convenience and good treatment. Upon this point Mr. Justice Story declared the case of Chamberlain v. Chandler (2 Mason, 242, and the same case is quoted approvingly in 57 Me., 217), in language strong and emphatic, that a passenger's contract entitled him to respectful treatment ~~also~~ and he <sup>also</sup> expressed the hope that every violation of the right would be visited in the shape of damages

with its appropriate punishment.

The ticket then, does not make the contract of the parties, it is simply a memorandum of its terms and does not contain the whole contract. Neither is the ticket within that general rule of law embraced in the Statute of Frauds, which declares that parol evidence shall not be introduced to alter or vary a written agreement or contract, for in 17 N. Y., 313, it was distinctly held that a contract might be shown independently of the ticket.

The contract thus made and evidenced by the ticket will also admit of negotiability by a simple transfer of the ticket. Railroad tickets as bills of lading and bills of exchange, etc. are held negotiable. The analogy holds also in case the ticket is lost for in such cases the loss is that of the holder and it rests where it falls.

Should the ticket indicate no particular route the nature of the contract requires that carriage shall be by the most usual, through and direct route, and this rule is to be observed by the carrier as well as by the passenger. 69 N. Y., 594.

By this contract, the company represents to the purchaser that he will carry him and his ordinary baggage- that is, his ordinary clothing, articles of personal convenience, usual ornaments and money for his personal expenses. Such baggage must be reasonable in weight, size, kind and value, and such as is naturally and usually required by a passenger and reasonable for his personal use while on the way or during his sojourn at the place of destination. The nature of the contract depends so much upon the obligation of the carrier and the rights of the passengers that we shall, after finding out who may become passengers, continue the discussion further in speaking of the obligations of the carrier and the duties of the passengers. Therefore in the meantime we shall attempt to find out who are competent to enter into this contract with a carrier; or in other words, to set forth the disqualifications applicable to some persons to prevent their travelling in the conveyance of the common carrier. ....

#### Who May become Passengers.

A passenger is one who has been received and accepted by a common carrier for transportation from one place

to another. It is presumed therefore that one who is in the carrier's conveyance travelling as persons ordinarily travel; or one <sup>who</sup> has placed himself in readiness to be carried, is a passenger. One who is on the train is, in the absence of countervailing proof to the contrary, presumed to be there rightfully, as a presumption of honesty and fair dealing always <sup>exists</sup> until by proof it is removed. Guilt is not to be presumed where innocence is possible.

As a general proposition then, it may be noted that all fit persons may become passengers. To this rule there are a few important limitations which we shall now enumerate and upon which passing remarks may be bestowed.

Persons who are drunk, disorderly or riotous or those who so demean themselves as to endanger the safety of other passengers, or interfere with their reasonable comfort or convenience are disqualified from becoming passengers. The same is true also of those who refuse to obey all reasonable rules and regulations prescribed by the common carrier. Passengers are bound to submit to such reasonable rules and regulations as carriers may adopt for the convenience of other passengers as well as

for their own proper interests. The same obedience and care must be exercised by all those who desire to become passengers. (Story on Bailments, 591 a).

Persons who are guilty of gross and vulgar habits, or who make disturbances on board, or whose characters are doubtful, dissolute, suspicious, or unequivocally bad are not worthy of becoming passengers. Nor are persons whose objects are to interfere with the interests of the carrier or make business less lucrative to them, such persons as ought to be entitled to carriage.

But in *Brown v. R.R.Co.*, (1 American and English Railroad Cases), it is said that when Judge Story makes use of the language above quoted he means in using the words character, habits and conduct as being injurious to other passengers, he means to use them in the sense that it subjects them to loss at the hands of thieves, gamblers or any one else by the exhibition of gross and vulgar habits. He does not mean that the railroad company shall become a censor of individual morals by assuming to classify its passengers according to its own ideas, more or less fastidious, of their characters as established by their private lives.

A railroad company has nothing whatever to do with private character, except in so far as it furnishes them with evidence of a probable injury about to be inflicted on other passengers or their business.

If a person has simply drank to excess he may become a passenger if he is not noisy, profane, riotous or abusive; but if he is dangerous or annoying, or if on account of his intoxicated condition he is obnoxious generally, he may be refused carriage or denied the rights of a passenger. The question is one which depends on the surrounding facts and circumstances of each particular case tested by the degree of intoxication and its effect upon the individual. For anticipation and naturally expected violence which might reasonably have been foreseen and avoided from one who is improperly received, the carrier is responsible for any damage he may do to fellow passengers and the carrier may exert all necessary power and means to eject any one <sup>as</sup> endangering, annoying or disturbing others.

Yet a person who is intoxicated and apt to become violent may be told to keep quiet and if he obeys the

carrier is not liable for any damage he may do or injury he may subsequently inflict upon co-passengers.

All persons may become passengers irrespective of race, color, religion, <sup>or</sup> political prejudice. But in Pennsylvania it has been held that a rule of the railroad company requiring a colored person to occupy one end of a coach was reasonable, but the soundness and wisdom of this decision may well be questioned <sup>if not</sup> ~~and~~ doubted.

Persons who are afflicted with any contagious disease deleterious to life or health may with propriety be refused transportation on grounds of public policy. This is also true of one who is taken sick while on the train with vomiting or any other similar disease thereby rendering his presence disagreeable to other passengers.

Persons using vulgar and profane language in a ladies' waiting room may be ejected therefrom as disorderly persons. So too of persons smoking and spitting on the floor as such acts do not constitute a compliance with reasonable rules and regulations of the carrier based upon common decency.

A person remains a passenger and is entitled to protection as such as well while leaving the train and re-

turning to it as at any other time.

One who fraudulently gets on board the train with the intent to ride and not pay his fare is a trespasser and not a passenger. This rule also extends to a case where one fraudulently attempts to ride upon an untransferable pass issued to another person.

We have now considered in a general way the classes of persons who may and who may not become passengers. This having been done we are now in position to pass to the fourth division of our subject and speak in the same brief way first of the obligations of the railroad company to its passengers, and secondly their duties. ....

#### Obligations of the Common Carrier to Their Passengers.

In speaking of the nature of the contract between carrier and passenger some of the obligations of the carrier, *have been mentioned* but there are many others and they will in a general way be now set forth, in opening this division of our subject, the following general propositions may be laid down.

A carrier is obliged to receive up to the limits of his carriage facilities all decent and fit persons

who are ready and willing to pay a reasonable fare.

As to the limit of the carriage capacity at which they are bound to receive passengers it may be remarked that the law in this respect does not require unreasonable things. As where in case ~~of~~ a large number of persons unexpectedly desire to take the train, the carrier is not obliged to carry all of them at one time.

At the depot or other regular place of receiving or discharging passengers the walks, platforms and all other means of ingress or egress to which the public do or naturally would resort, must be in a safe and suitable condition in order to accommodate those who desire to become passengers.

The building itself must be well heated, lighted ~~and~~ ventilated.

It is also the duty of the company to use the utmost care and foresight which may be employed by human effort to make everything as safe as possible. The company is to take every possible precaution, not inconsistent with cheapness and speed, to prevent injury or accident. They do not warrant the absolute roadworthiness of their vehicles, and there is no implied contract that

their coaches and machinery are free from those defects which neither human care, skill or foresight can detect.

Coaches must be suitable, comfortable and sufficient in number, subject to the limitation imposed <sup>above</sup> ~~afore~~, but the company is not bound to furnish and equip them with all the latest improvements and patents. For in this respect the law requires of them only reasonable, suitable and usual conveniences and accomidations.

The train officials must warn of the approach of ~~da~~ danger either on board the train or at a station, and give notice also of approaching stations. Failure to do this creates a liability in case of injury. Notice must also be given that the train is about to start.

The carrier is obliged to protect his passengers from injury, wilfull misconduct or negligence of servants, or carelessness of others, as well from intended violence of ruffins or rouges. (72 N. Y., 50) He is liable for the torts of his agents and servants if comitted within the general scope of their authority.

Information must be given for the benefit of every passenger who desires it and it must be so imparted, with curteousness and kindness. It must also be correct

and true; for it is the passengers duty to inquire and inform himself in order to make a proper and expeditious journey reaching the desired destination in due time. If mistakes however are made not induced by the railroad company, or where ordinary diligence would prevented, then the passenger has no redress.

A few lines may now be devoted to considering the rights of passengers but it should be borne in mind in order to make more complete our <sup>previous</sup> ~~subsequent~~ statements just as well as those that follow, that the word right is always correlative with that of duty. ....

#### Rights of Passengers.

In the first place a passenger is entitled to a seat as this is not inconsistent with that degree of comfort to which every passenger is entitled. It is the duty of the company and their officers to provide and furnish clean, comfortable and suitable seats, and in securing seats passengers are not to struggle or wrangle with other persons for them, nor are they to shift and scramble for themselves.

The conductor may seat a few whom he may select in the ladies' car, or if the door is open any person seating himself there cannot be removed unless a comfortable

seat is found elsewhere. A person may in case he does not find a seat enter a palace car and this without application to a conductor or porter or payment of extra fare, even though such car is owned and operated by a different company from that owning and operating the road. He is entitled to remain there until a good seat is provided for him.

Yet if a passenger choose to accept transportation without a seat he must upon demand pay his fare and this is true also if he enter the car well knowing that he ~~en~~ cannot obtain a seat.

Passengers also have the right to get off the cars at any station where the train stops long enough, to purchase refreshments, or if telegraph blanks are furnished on the road and there is a telegraph office at a station, to send a telegram.

A passenger's first duty <sup>is</sup> ~~is~~ to <sup>obey</sup> all reasonable rules and regulations of which he has notice, and in the second place he is obliged to at all times exercise due care.

It is possible that a passenger may have a legal right to extend his arms or head out of the window but

this question has not been settled by the courts and the ~~right~~ <sup>is</sup> is a doubtful one.

All orders given by the carrier, unless it is certain that danger will result must be strictly obeyed as the carrier owes less duty and is held less liable where one has violated his rules.

A passenger must exhibit his ticket as often as the conductor may require it and for refusal so to do may be put off the train even though he change his mind and do so after the train has stopped. 15 N. Y., 455. ....

#### Trespassers.

As has been before stated the presumption that one who is on the train travelling as a passenger ordinarily travels is a passenger but a person who is wrongfully on the train not intending to pay his fare, or obey the ~~com-~~panie's reasonable rules, is a trespasser. To such persons the carrier owes but little duty as compared with that which he owes to a passenger. A person who was in the first instance rightfully upon the train and who refused to pay his fare until some legal right which he demanded was secured, was held not to be a trespasser but a passenger. He might however become a trespasser if he

did not leave the train at the first opportunity offered him. One who attempts to ride fraudulently upon the engine or platform of a car may be held to be a trespasser. Such persons may be ejected at any proper place and time. The conductor in ejecting such persons is not bound to consider their mere convenience. But on the other hand a person so ejected must not be left wholly without any chance of obtaining food or shelter or other necessary entertainment. In New York a statute provides that in case one refuses to pay fare it shall be lawful for the conductor to put him and his baggage off the cars, using no more force than is necessary, at any stopping place or near any house as the conductor shall elect upon stopping the train. Hence as a general rule we may say that a trespasser may be ejected anywhere but as to a passenger a different rule obtains.

If a person is sick or <sup>25</sup>disabled as not to be in condition to care for himself he must be ejected when necessary at a station. If a passenger is helpless he must be given to the charge of someone who will take care of him and minister to his wants. He must not in such a case be left exposed and uncared for. In exercising this

right the carrier must use no more force than is necessary neither must he be insulting or overbearing. It is due the passenger ejected as well as to the other passengers that no more disturbance than is necessary be created. Law and reason regulate the mode of exercising this right and the conductor is not empowered to remove and at such a place and in such a manner as his whim, caprice or malice may dictate or suggest. A passenger is not to be treated as a felon or an outlaw.

When it becomes necessary to eject a person the train must be brought to a standstill as one can under no circumstances be compelled to get off from a moving train.

The points which we at the beginning of this article set out to ~~reach~~<sup>read</sup> and pass were: The legal status of a railroad ticket; The contract; Those who may make such a contract; Obligations of the carrier; Their duties; Rights of passengers; Trespassers and the right of ejection; and although our treatise upon these points has been brief these points have nevertheless been quickly reached and quite as quickly passed.