

HENRY F. COOMBS.....SUPPLIANT;

1895

AND

Mar. 4.

HER MAJESTY THE QUEEN.....RESPONDENT.

Contract—Common carrier—Railway passenger's ticket—Condition printed on face—No stop over—Continuous journey.

The suppliant, who was a manufacturers' agent and traveller, purchased an excursion ticket for passage over the Intercolonial Railway between certain points and return within a specified time. On the going half, printed in capitals, were the words, "good on date of issue only," and immediately thereunder, in full-faced type, "no stop over allowed." He knew there was printing on the ticket but put it into his pocket without reading it. He began the journey on the same day he purchased the ticket, but stopped off for the night at a station about half-way from his destination on the going journey. The next morning he attempted to continue his journey to such destination by a regular passenger train. Being asked for his ticket he presented the one on which he had travelled the evening before, and was told by the conductor that it was good for a continuous passage only. On his refusal to pay the prescribed fare for the rest of the going journey, the conductor put him off the train at a proper place, using no unnecessary force.

Held, that issuing to the suppliant a ticket with the conditions upon which it was issued plainly and distinctly printed upon the face of it was in itself reasonably sufficient notice of such conditions; and if, under the circumstances, he saw fit to put the ticket into his pocket without reading it he had nothing to complain of except his own carelessness or indifference.

PETITION OF RIGHT for damages against the Crown as a common carrier.

The facts of the case are stated in the reasons for judgment.

The case was tried at St. John, N.B., on 1st August, 1894.

C. N. Skinner, Q.C. (with whom was *H. A. McKeown*), for the suppliant.

1895
 COOMBS
 v.
 THE
 QUEEN.
 Statement
 of Facts.

E. L. Newcombe, Q.C., Deputy Minister of Justice, (with whom was *J. A. Belyea*) for the respondent, cited the following authorities:—*Armstrong v. Grand Trunk Railway* (1); *Thompson's Carriage of Passengers* (2); *Stone v. C. N. W. Railway Company* (3); *Craig v. G. W. Railway Co.* (4); *Briggs v. Grand Trunk Railway* (5); *Beaver v. Grand Trunk Railway* (6); *The Government Railways Act* (7); *McNamara on Carriers* (8); *Beven on Negligence* (9); *Zunz v. The South Eastern Railway Company* (10); *Henderson v. Stevenson* (11); *Parker v. South Eastern Railway Company* (12); *Burke v. The South Eastern Railway Company* (13); *Richardson v. Rowntree* (14); *G. T. R. Co. v. Cunningham* (15); *Livingston v. Grand Trunk Railway Company* (16); *Drew v. Central Pacific Railway Company* (17); *Hutchinson on Carriers* (18).

THE JUDGE OF THE EXCHEQUER COURT now (March 4th, 1895) delivered judgment :

The suppliant is a manufacturers' agent and traveller. On Good Friday, March 31st, 1893, he was at Moncton, and having business to transact at Chatham Junction on the Intercolonial Railway, thought to take advantage of an issue of excursion return tickets which the Minister of Railways and Canals had authorized for the Easter holidays. He had seen the advertisement of the General Manager of Government Railways, the material part of which, so far as concerns this case, was as follows :

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| (1) 2 P. & B. 458. | (10) L.R. 4 Q.B. 539. |
| (2) P. 69. | (11) L.R. 2 H.L. (Sc.) 470. |
| (3) 29 Am. Rep. 458. | (12) L.R. 2 C.P.D. 416. |
| (4) 24 U.C.Q.B. 504. | (13) L.R. 5 C.P.D. 1. |
| (5) 24 U.C.Q.B. 510. | (14) [1894] A.C. 217. |
| (6) 22 Can. S.C.R. 498. | (15) 9 L.C. Jurist 57. |
| (7) Sec. 80 [ed. 1881]. | (16) 21 L.C. Jurist 13. |
| (8) Pages 18, 447 and 448. | (17) 51 Cal. 425. Cited in <i>Lacey's</i> |
| (9) Page 650 et seq. | <i>Digest</i> Volume 2, p. 1206. |
| | (18) [ed. 1882] p. 462. |

For the Public.
(Local Issue.)

1895
COOMBS
v.
THE
QUEEN.

Reasons
for
Judgment.

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. Good for return up to and including April 4th, 1893.

About eight o'clock in the evening of the day mentioned, the suppliant went to the ticket office and asked for an excursion ticket to Chatham Junction, and having paid the single fare, \$2.16, or three cents per mile for 72 miles, was given a ticket, on the face of which on the "going half," printed in capitals, were the words "good on date of issue only," and immediately thereunder, in full-faced type, "No stop over allowed." The suppliant knew there was printing on the ticket but did not read it. The train by which he proposed to make the journey left Moncton on that evening between 8 and 9 o'clock, and by it he travelled as far as Harcourt Station, which is about half way between Moncton and Chatham Junction. At Harcourt he stopped for the night. He was not feeling well, he says, and he had business to do there. The next day, April 1st, having finished his business he proceeded on his journey by a regular passenger train. Being asked for his ticket, he presented the one on which he had travelled the evening before, and was told that it was not good; that it was good for a continuous passage on the day of issue only. There is, as is usual in such cases, some difference between the suppliant's account and the conductor's of what took place. But assuming that the tendered ticket was not good for the journey, I see no reason to think that the conductor in any way exceeded his duty or his instructions. He demanded payment of the prescribed fare, and the suppliant persisting in his refusal to pay it, he removed the latter from the train at a proper place, using no unnecessary force (1).

(1) R. S. C. c. 38, s. 37.

1895
 COOMBS
 v.
 THE
 QUEEN.
 ———
 Reasons
 for
 Judgment.
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It will have been observed that by the General Manager's advertisement the tickets were to be "issued on March 30th and 31st, and on April 1st, inclusive" and that they were not to be "good going after April 1st." This notice was apparently construed by the suppliant to mean that a ticket issued on any one of the days mentioned would be good going on any day up to and including April 1st. But that is not the question with which I have at present to deal. Whether such a ticket as that in evidence issued pursuant to this advertisement on the 30th or 31st of March, would have been good for a continuous journey commenced, say on April 1st, is one question. That presented by the case, namely, whether the passenger having commenced his journey on either of the three days, could break it, and stopping over continue it on another day by another train, is a different question.

Now it cannot, I think, be said that there is anything in the advertisement to prevent the issue of a ticket with the "no stop over" condition attached, or that such an issue in this case was unusual or improper. The only questions are: (1). Did the suppliant know there was printing on the ticket? (2). Did he know or believe that this printing contained conditions relating to the terms of the contract of carriage? (3). If not, was what was done reasonably sufficient to give him notice thereof? (1)

He knew there was printing on the ticket, but had no reason, he says, to think there was anything special on it. He had not noticed anything unusual on it. He

(1) See *Parker v. South Eastern Western Ry. Co.*, L.R. 1 Q.B.D. 515; *Burke v. The South Eastern Railway Co.*, L.R.C.P.D. 416; and *Richardson v. Rowntree*, [1894] A.C. 217; see also *Zunz v. The South Eastern Ry. Co.*, L.R. 4 Q.B. 539; *Henderson v. Stevenson* L.R. 2 H.L. (Sc.) 470; *Harris v. The Great* *Watkins v. Rymill*, 10 Q.B.D. 178, in which the earlier cases are discussed and the principles to be deduced from them stated.

had not in fact noticed anything, as he had not looked at the ticket. As a matter of fact it cannot, I suppose, be said that for the class of ticket he was purchasing the condition was unusual or special. It is one that every traveller of experience is familiar with, and he was an intelligent man constantly travelling. At all events, he does not pretend to say that he did not know the printing concerned him or related to the conditions on which he was to be carried; and even if he did not know this, the issue to him of a ticket with the condition plainly and distinctly printed upon the face of it, was in itself reasonably sufficient to give him notice. If, under the circumstances, he saw fit to put the ticket in his pocket without reading it, he has now nothing to complain of except his own carelessness or indifference. The petition must be dismissed.

Apart altogether from a "no stop over" condition printed on the face of the ticket, it has been held that the contract in such a case is to carry in one continuous journey (1).

There will be judgment for the respondent, with costs.

Solicitor for suppliant: *H. A. McKeown.*

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

1895
 COOMBS
 v.
 THE
 QUEEN.
 ———
 Reasons
 for
 Judgment.
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(1) *Craig v. The Great Western Ry. Co.*, 24 U.C.Q.B. 504; *Betts v. The Grand Trunk Ry. Co.*, 24 U.C.Q.B. 510; see also *Cunningham v. The Grand Ry. Co.*, 11 L.C.J. 107, and *The Grand Trunk Ry. Co. v. Cunningham*, 21 L.C.J. 13.