

common prudence to carry every passenger who should claim a right to ride on its cars, and thus to submit to frequent frauds, or else, in order to avoid this wrong, to make such stringent rules as greatly to incommode the public, and deprive them of the facilities of transfer from one line to another, which they now enjoy. It is a reasonable practice to require a passenger to pay his fare, or to show a ticket, check, or pass; and, in view of the difficulties above alluded to, it would be unreasonable to hold that a passenger, without such evidence of his right to be carried, might forcibly retain his seat in a car, upon his mere statement that he is entitled to passage. If the company has agreed to furnish him with a proper ticket, and has failed to do so, he is not at liberty to assert and maintain by force his rights under that contract; he is bound to yield, for the time being, to the reasonable practice and requirements of the company, and enforce his rights in a more appropriate way."

This decision asserts the "duty" of the passenger to act to prevent the positive wrong of the carrier. Though this is a famous case it is a clear instance of a misapplication of the rule of avoidable consequences and a failure to apply the most elementary rules of agency.

This case very well expresses the minority view and assigns reasons which are probably the best so far stated for the minority rule. The real reason for the rule, as strongly indicated by the opinion, is the difficulty in which the carrier finds itself under the majority rule. But it is to be observed that that difficulty has not proven so great in states having the majority rule that legislative action repealing the rule has been deemed necessary. Speaking of difficulties, what about the difficulties under which the passenger finds himself under the minority rule?

Many of the cases often cited as holding that the passenger is under a duty to pay his fare a second time in order to prevent being wrongfully ejected, really hold nothing of the kind. For instance, the following cases, sometimes cited as so holding, do not support the minority rule: *Cincinnati, Hamilton & Dayton R. Co. v. Cole*, not squarely in point; *L.N. & G.S.R. Co. v. Guinan*, holding merely that exemplary damages cannot be assessed against the carrier, on the facts; *Lake Shore & M.S. Ry. Co. v. Pierce*, not strictly in point, because of the peculiar facts in the case.