

U. S. Rep.]

McCLURE v. THE P. W. & B. R. W. Co.

[U. S. Rep.]

right to put the plaintiff off, the plaintiff is entitled to recover if they find from the evidence that in so doing the conductor required him to leave while the train was in motion, or put him off at a place where there was no station.

4. Even if the jury should find from the evidence that the conductor of the train in question had a right to put the plaintiff off, the plaintiff is entitled to recover, if they find from the evidence that in so doing the said conductor put him off at a place where there was no station or house near at hand, or any adjacent place for shelter or food, or at any unusual place.

The following instruction was asked by the defendant:

If the jury shall find from the evidence that the plaintiff, on the 1st day of May, 1867, purchased at New York, a through ticket from that place to Baltimore, over the New Jersey Railroad and P. W. & B. Railroad, and on that day proceeded on his journey as far as Perryville, on the last-named road, where he left the train; and if the jury shall further find that after passing Philadelphia, the then conductor of the train took up said through ticket and gave plaintiff the check in lieu thereof, which has been offered in evidence; and if the jury shall further find that the plaintiff, on the 6th day of said May, got upon the defendant's train for Baltimore at Havre-de-Grace, and the then conductor refused to take said check, but informed the plaintiff that he must pay his fare to Baltimore, or he would be obliged to stop the cars and put him off, and that the plaintiff refused to pay said fare, and the said plaintiff was then put off, then the plaintiff is not entitled to recover in this case, provided the jury shall find that no more force than was necessary was used in putting said plaintiff off the train, even if the jury shall further find, that on arriving at Perryville on the train, on the said 1st day of May, the plaintiff inquired from a man at the window of the ticket-office of the defendant at that place, whether said check would be good to take him on to Baltimore another day, and was told by said man that it would.

The court rejected the first, second and third prayers of the plaintiff, and granted the fourth, as also the prayer of the defendant. The plaintiff excepted to the ruling of the court in rejecting his prayers, and granting the prayer of the defendant, and the verdict and judgment being against him, he appealed.

The cause was argued before Bartol, C.J., Stewart, Maushy, Grason, Miller and Alvey, JJ.

Albert Ritchie for the appellant, cited the following authorities: *Balt. & O. R. R. v. Blocker*, 27 Md. 277; *Goddard v. Grand Trunk R. R.*, 10 A. L. R. 17; *Terre Haute A. & St. L. R. R. v. Vanatta*, 21 Ill. 188; *Du Laurans v. St. P. & P. R. R.*, 15 Minn. 49; *Holmes v. Wakefield*, 12 Allen 580; *Sanford v. 8th Av. R. R.*, 23 N. Y. 343.

Thomas Donaldson, for the appellee, referred to *Balt. C. Pass. R. v. Wilkinson*, 30 Md. 224; 2 Redf. on R. 219; *C. C. & C. R. R. v. Bartram*, 11 Ohio 457; *Cheney v. B. & M. R. R. Co.*, 11 Metc. 121; *Beebe v. Ayres*, 28 Barb. 275; *Johnson v. Concord R. R.*, 46 N. H. 213; *State v. Overton*, 4 Zab. 435.

GRASON, J., delivered the opinion of the court.

At the trial of this case in the court below the plaintiff offered four prayers, the last of which was granted and the others were rejected; and the defendants offered one prayer which was granted. The plaintiff excepted to the rejection of his first three prayers and to the granting of the defendants' prayer, and the judgment being against him, he has taken his appeal.

The first question to be considered is, whether a person who has purchased a through ticket from New York to Baltimore, taken his place in a train, and entered upon his journey, has the right to leave the train at a way-station on the route, and afterward to enter another train and proceed to his original point of destination without procuring another ticket or paying his fare from the station at which he again enters the car. We think it clear that he cannot.

The contract between the parties is, that upon the payment of the fare the company undertakes to carry the passenger to the point named, and he is furnished with a ticket as evidence that he has paid the required fare, and is entitled to be carried to the place named. When the passenger has once elected the train on which he is to be transported, and entered upon his journey, he has no right, unless the contract has been modified by competent authority, to leave the train at a way-station and then take another train on which to complete his journey, but is bound by the contract to proceed directly to the place to which the contract entitled him to be taken. Having once made his election of the train and entered upon the journey, he cannot leave that train, while it is in a reasonable manner in the undertaking of the carrier, and enter another train without violating the contract he has entered into with the company. "A contrary doctrine would necessarily impose the carrier additional duties, the removal of the passenger and his baggage from one train to another, and the consequent additional attention on the part of the company; also an increased risk of accidents, and a hindrance and delay, not contemplated by a reasonable interpretation of their undertaking." *C. C. & C. R. R. Co. v. Bartram*, 11 Ohio, 463; *State v. Overton*, 4 Zab. 438; 2 Redf. on Railways, 219.

In the case now under consideration the appellant, on the 1st day of May, 1867, purchased a through ticket from New York to Baltimore, and on that morning took his place in the through train and entered upon his journey, and some miles south of Philadelphia his ticket was taken up, according to custom, by the conductor of the appellees' train, who gave him in its stead what is called a "conductor's check," with the words "*good for this day and train only*," printed upon one side, and a list of stations and numerals on the other; the numerals indicating the months and days of the month. The numerals 5 and 1 were punched, showing that the conductor's check had been used on the appellees' train, on the 1st day of May. It is clear, therefore, that the appellant had notice that the check, thus delivered to him in the place of his ticket, could be used only on that day and train. When the train arrived at