

its potent dissent.¹ Our chief difficulty comes in truth from those States whose judiciary, while expressing full respect for the authority of *Railway Company v. Lockwood*, attempt to draw a further distinction between drovers' passes and tickets which are given more clearly as a gratuity. Two recent opinions, pronounced, we regret to say, by appellant tribunals as illustrious and honoured as those of Connecticut and Massachusetts, range upon the carrier's side of the controversy, and declare that conditions are lawful and binding which disclaim, as to passengers who are carried free, all liability whatsoever on the carrier's part for personal injuries occasioned by his negligent transportation. In the earlier case of the two, that of Connecticut, in 1885,² a boy of sixteen years, who was employed by the keeper of a railway restaurant, had a free pass to travel over the road given him which contained a harsh condition of this character. He used the ticket more particularly when selling sandwiches and fruit upon the train; though at the time of receiving the injury he happened to be travelling on his private account, as the pass permitted him to do. He was plainly injured by the gross negligence of the railway employees; but the court, notwithstanding, shielded the company under cover of its own printed condition, and in an elaborate opinion declared that while public policy might properly annul such an exemption in a drover's pass, or wherever else one travelled for hire upon recompense, this boy had no legal redress. In 1890 the Supreme Court of Massachusetts followed with a similar decision,³ indorsing the doctrine of this case; while fully admitting at the same time that there was great variance of legal authority on the subject, and that a well-considered Texas case⁴ had recently taken an opposite view. The precise circumstances under which the "free pass" was given in this Massachusetts case are not stated; but the court intimates that the plaintiff solicited the pass for a ride to please himself. If so, this is more clearly a gratuitous instance than we have noticed in the former reports. Here the ticket which was given had a printed condition on the back which purported to assume, on the user's part, "all risk of accident of every name and nature." Singularly enough, this condition provided that the passenger should sign; but the passenger did not sign, and perhaps did not read the back of the ticket at all; and yet the court declared the plaintiff estopped to deny the validity of the contract inasmuch as he had used the ticket and taken his ride.⁵ Here, once again,

¹ So, too, with the New Jersey case, *Kinney v. Central R.*, 32 N.J. 409 (1868), which relied upon the English and New York precedents.

² *Griswold v. New York & New England R.*, 53 Conn. 371.

³ *Quimby v. Boston & Maine R.*, 150 Mass. 365.

⁴ *Gulf R. v. McGown*, 65 Tex. 640.

⁵ It seems a little strange that the court should have ruled to this effect so unhesitatingly. To be sure there are numerous cases of "contract tickets" where special stipulations of various kinds, none of which involved the doubtful assumption of all risk for personal injury, have been sustained in the carrier's favour upon the suggestion of estop-

pel by use of the ticket, although not signed by the passenger as the ticket provided. See this subject reviewed with copious citations in *Ponsica v. Cunard S.S. Co.*, Mass. 1891. But on the other hand may be found numerous precedents which protect a carrier's customer, especially where the stipulations not thus clearly assented to were of questionable character, or printed on the back of the document given to the customer, or such as not likely to meet his eye. See *Schouler Bailments*, ss. 466-472. The idea of non-assent to the special condition was strongly pressed before the court in *Railway Co. v. Stevens*, 95 U.S. 655, a case very closely resembling that of 150 Mass. 365, though,