

being ejected. As he was not entitled to ride upon the train in question, it is apparent that the damages which he suffered by the fault of the first conductor are covered by a recovery of the amount of fare which he was compelled by his fault to pay." The court proceeds to distinguish this case from one in which the passenger presents a ticket, on its face, apparently good.

In the beginning of the above excerpt, the court speaks of the mistake of the former conductor just as a layman might speak of some error as being trifling and excusable. The court speaks as if it supposed that a wrong done by mistake is not a wrong at all.

Further, when the court says: "His remedy was not by insisting upon a further breach of duty," it seems to refer to the conductor's duty to the company employing him and completely to lose sight of the duty of the carrier to the passenger.

When the court speaks of the "duty" of the passenger to leave the train peaceably or pay his fare, it implies that the carrier, having threatened a wrong, has a right correlative with and commensurate to this duty. As affecting this supposed duty, it is said that the evidence showed that he had the money with which to pay his fare.

If it were an ordinary case in which A threatens B with a tort or with a breach of contract, unless B pays A one dollar, it would be said by any court that the fact that B had one dollar in his pocket was entirely immaterial. B's possession of one dollar would not be an operative fact producing, or contributing to the production of, a duty in B to pay A one dollar.

Another court, in such a case, has quoted the following without citing the source: "It is the duty of a party to protect himself from the injurious consequences of an unlawful act of another if he can do so by ordinary effort and care at a moderate and reasonable expense, and for such reasonable exertion and expense in that behalf expended he may charge the wrongdoer; and where by the use of such means he may limit and prevent further loss he can only recover such loss as could thus be prevented."

Even if this general rule as to avoidable consequences be applied to these cases, what would constitute "moderate and reasonable expenses?" It is clear that the difficulty of administering such a rule, in these cases, is very great. It might