

U. S. Rep.]

ADAM DIETRICH V. PENNSYLVANIA A. R. R. Co.

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“good to travel every day, from day to day, from the 11th to the 16th of March, by as many trains from and to every station at which the trains stop, and by as many stages as A. Dietrich may elect to make.” Then when we come to the marrow of the ticket, to wit: Good for “one seat from Philadelphia to Pittsburgh,” it does not change the purpose and the restrictive character of it. There is nothing in the words “one seat” which enlarges the meaning so that the holder may take seat after seat, train after train, day after day, and from station to station, especially in contravention of the known regulations of the company as to the travel on such tickets. It necessarily follows that the contract for “one seat from Philadelphia to Pittsburgh” must mean in the train which the holder of the ticket enters to be carried, and not by train after train, and by broken stage day after day. That this is the true interpretation of the contract is decided in *State v. Overton*, 4 Zabriskie, 438; *Cl. Col. & Cin. R. R. v. Bartram*, 11 Ohio St. Rep. 462; *Johnson v. Con. R. R. Co.*, 46 N. H. 213, and *Chenney v. Bos. & M. E. R. Co.*, 11 Metcalf, 121; Angell on Carriers, Ed. 1808, § 609. No cases are cited to the contrary, and we remember none. The language of C. J. Green, on this point, in *State v. Overton* is so much to the purpose we quote it. “The question (he says) is obviously a question of contract between the passenger and the company. By paying for passage and procuring a ticket from Newark to Morristown, the passenger acquired the right to be carried directly from one point to the other without interruption. He acquired no right to be transported from one point to another upon the route at different times and by different lines of conveyance, until the entire journey was accomplished. The company engaged to carry the passenger over the entire road for a stipulated price. But it was no part of the contract that they would suffer him to leave the train and resume his seat in another train at any intervening point upon the road.” “If the passenger chose voluntarily to leave the train before reaching his destination he forfeited all rights under his contract. The company did not engage and were not bound to carry him in any other train, or at any other time over the residue of the route.” This is the clear legal effect of the contract between the company and the passenger in the absence of any evidence to the contrary. If the passenger insists that under his contract, by virtue of general usage, or the custom of the road, he is entitled to be carried at his pleasure, either by one or different trains, the burthen of proof was upon the State. That is to lay on a passenger, the case being an indictment against a conductor for a battery in putting off a passenger unlawfully. In adopting this language of the learned Ch. Justice of New Jersey, we should not omit to guard our meaning, by saying there may be exceptions, where from misfortune or accident, without his fault, the transit of a passenger is interrupted, and where he may resume his journey afterwards. In the present case the ticket of Dietrich gave him no right to stop off, and the company, when he took his seat in the train at Philadelphia, having entered upon the performances of its contracts, had a right to

continue its execution without interruption. Another reason is that fare covers the ordinary luggage of the passenger, entitling it to be checked through to the point of destination. But if the passenger may stop off he may demand his baggage at each stoppage, or if it go on he will not be at the end of the journey to receive it. The contract was therefore broken by Dietrich himself when he stopped at Lancaster without permission. When he came upon the train the next day, he began a new journey, and on refusing to pay his fare he became a trespasser, and was rightfully put off at Mount Joy. But it is argued that as he was permitted by Young to re-enter the train and was carried to Altoona he acquired a right to be carried to Pittsburgh. This is erroneous. When Dietrich stopped at Lancaster his right of transportation under his ticket ended, as we have seen. Consequently, when he began a new passage the next day he was bound to pay his fare. He knew this, and that he was put off at Mount Joy because he would not pay it. Therefore Young, as conductor, being bound by the rules of the company, not only had no authority, but acted against his orders in permitting him to return upon the train without payment of his fare. The ticket having lost its title to be recognized, all that Young did thereafter was unauthorized, and the plaintiff knew this. Clearly no title to be carried through to Pittsburgh could be acquired by Young re-offering him to ride without payment of his fare. Young could not carry him, and could not by his omission to collect the fare, send him forward without payment of any. His violation of duty in carrying a passenger without payment of fare clearly could not bind his successor upon the remainder of the route. It is very clear that when Hankins took his place on the train, between Altoona and Pittsburgh, it was not only his right, but his duty to demand the fare between those places. He found Dietrich without a ticket imparting a right of passage and without any evidence of payment of the fare. The fact that the company had lost the fare from Lancaster to Altoona, by Young's violation of duty, conferred no right of further transportation, while Dietrich, at every step afterwards, was travelling without right, and with full notice that he was doing so. As remarked in *Beebe v. Ayres*, 28 Barbour, 278; the conduct of one conductor in violating the rules of his employers could not prejudice another employee, more faithful than himself, who has adhered to his instructions and discharged his duties under them.

The judgment of the court below is therefore affirmed.

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#### TO CORRESPONDENTS.

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