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LIABILITY OF CARRIERS.

Railway Companies that carry certain classes of passengers on free passes, usually stipulate that those using a pass shall have no claim upon the Company for injuries which they may receive on the road. In a case decided recently by the Supreme Court of the United States, *Stevens* v. *The Grand Trunk Railway Company*, the effect of such a stipulation was discussed. The action was brought by Stevens to recover damages for injuries received whilst a passenger in the Company's cars. The plaintiff, being the owner of a patented car-coupling, was negotiating with the Grand Trunk Company at Portland, Maine, for its adoption and use by the Company; and was requested by the latter to go to Montreal to see the Superintendent of the Car department in relation to the matter, the Company offering to pay his expenses. Stevens consented to do this; and, in pursuance of the arrangement, was furnished with a pass over the defendant's line from Portland to Montreal. On the back was the following printed endorsement:

"The person accepting this free ticket, in consideration thereof assumes all risk of all accidents, and expressly agrees that the Company shall not be liable, under any circumstances, whether of negligence by their agents or otherwise, for any injury to the person, or for any loss or injury to the property of the passenger using the ticket. If presented by any other person than the individual named therein, the conductor will take up this ticket and collect fare."

During the trip from Portland to Montreal, the car in which Stevens was riding ran off the track, and was precipitated down an embankment, and the plaintiff was much injured thereby. The direct cause of the accident, it was proved, was that at the place where it occurred, and for some considerable distance in each direction, the bolts had been broken off the fish-plates which held the ends of the rails together, so that many of the plates had fallen off on each side, leaving the rails without lateral support, and causing the track to spread. The Company relied for its defence upon the fact that the plaintiff was travelling under the pass with the condition endorsed thereon, which, it was contended, exempted the Company from liability. As to this pass, the plaintiff testified that he put it in his pocket without looking at it, and the jury found specially that he did not read the endorsement previous to the accident, and did not know what was endorsed upon it. He had been a railroad conductor, however, and had seen many free passes, some of which had a similar endorsement.

The Judge of first instance regarded the case as one of carriage for hire, and not as gratuitous carriage, as the Company agreed to pay the plaintiff's expenses to Montreal. The Supreme Court concurred in this view. Judge Bradley remarked: "The transportation of the plaintiff in the defendant's cars, though not paid for by him in money, was not a matter of charity nor of gratuity in any sense. It was by virtue of an agreement, in which the mutual interest of the parties was consulted. It was part of the consideration for which the plaintiff consented to take the journey to Montreal. His expenses in making that journey were to be paid by the defendant, and of these the expense of his transportation was a part. The giving him a free pass did not alter the nature of the transportation."

Taking this view, the Court did not find it necessary to determine what would have been the rights of the parties if the plaintiff had been a free or gratuitous passenger. But Judge Bradley intimated pretty strongly that this would not have altered the case. "We do not mean to imply, however," he said, "that we should have come to a different conclusion, had the plaintiff been a free passenger instead of a passenger for hire. We are aware that respectable tribunals have asserted the right to stipulate for exemption in such a case; and it is often asked with apparent confidence, 'May not men make their own contracts, or in other words, may not a man do what he will with his own?' The question, at first sight, seems a simple one; but there is a question lying behind that: 'Can a man call that absolutely his own, which he holds as a great public trust, by the public grant, and for the public use as well as his own profit?' The business of the common carrier, in this country at least, is emphatically a branch of the public service;