
*RIGHTS OF PASSENGER—EJECTION FROM CAR
FOR NON-PAYMENT OF FARE.**

In some of the cases involving the question whether a passenger about to be wrongfully ejected because of his not having a ticket or because of his having a wrong ticket, where his failure to have a ticket or to have a proper ticket results from the negligent or wilful wrong of the carrier, it has sometimes been held that the passenger is under a duty to avoid the damage incident to ejection by paying the wrongfully required fare. The weight of authority is *contra*, but the number of decisions supporting the minority view is sufficient to justify an examination of the question with the purpose of determining the principles involved.

The courts that have decided that the passenger is under a duty to prevent the wrongful expulsion, are simply applying the rule of avoidable consequences to facts to which it can have no proper application, and forgetting to apply one of the most elementary rules of agency—the rule that a principal must answer for the acts of his agent within the scope of the business entrusted to the agent.

We shall first examine some of the cases holding that the passenger is under a duty to avoid wrongful expulsion by paying his fare a second time.

Van Dusen v. Grand Trunk R. Co. is a case in which it is held that the passenger was under a duty to pay his fare again in order to avoid his wrongful ejection from the train. The court said: "In the present case the failure of the former conductor to furnish plaintiff a check was evidently a mistake and the plaintiff, without discovering the mistake, had taken his seat in the train from Port Huron to Trenton, he at the time not possessing any evidence of his right to ride. Upon discovering this mistake his remedy was not by insisting upon a further breach of duty or of the rules of the conductor in charge of the Trenton train. On the contrary, it was his duty to leave the train peaceably, or pay his fare and seek his remedy for damages resulting from either necessity as the situation at the time required. But the evidence shows that he had the money with which to pay his fare, and he did so by a later train after

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