

Eng. Rep.]

LANCFIELD V. IGGULDEN.—DIETRICH V. P. A. R. R. Co.

[U. S. Rep.]

from other passengers by the same ship to the defendants, a letter of the 13th of February, 1871, from the captain of the ship to the defendants, and a letter of the same date from Lambie, the owner, to the defendants.

A summons was then taken out for inspection of these documents, and Cleasby B., granted inspection of all of them, "except letters of other passengers, and letters of the captain and owner subsequent to the 21st of December, 1870, without prejudice to application to court in respect of letters of other passengers."

Murphy moved for a rule to vary the above order, by adding leave to inspect the documents which Cleasby B., had excluded from his order.

WILLES, J.—I see no ground for interfering with respect to the letters of other passengers to the defendants, which have nothing to do with the contract between the plaintiff and the defendants and which are not shown to relate to some common matter in dispute between all the parties. The letters from the captain and from the owner to the defendants are after litigation, and fall within *Woolly v. The North London Railway Co.*, 17 W. R. 797, L. R. 4 C. P. 602.

BYLES, J.—I am of the same opinion. The letters which were written after the commencement of the action or *post litum motam* are clearly not admissible; nor are the letters from other passengers who were claiming compensation from the defendants.

BRETT, J.—It is not suggested that the passengers' letters could be admissible on the first count of the declaration, but it is said that they are admissible under the count for fraudulent misrepresentation. The plaintiff will have to make out that the representations were false to the knowledge of the defendants when made; and can it be said that the letters of other passengers complaining of the state of the ship are admissible to prove that? They never could be put in evidence by the plaintiff to prove any one thing he has to prove: and if they are wanted to cross-examine the defendants on, that is not an orthodox purpose for inspection. I can, however, see an unworthy purpose for which these letters might be wanted, viz., for prejudice, to infer the defendants' consciousness of guilt from their paying claims made upon them, whereas, in fact, they may have paid merely because the claims were small. The other letters were written after the dispute had arisen, and were from the captain and from the owner, and would clearly not be written in the ordinary course. They therefore fall within the cases in which communications made to railway companies by their servants have been held privileged.

Rule refused.

CHANCERY.

LANCFIELD V. IGGULDEN.

Practice—Evidence—Affidavits—Cross-examination of plaintiff—Subsequent affidavits.

Affidavits filed by the defendant subsequently to the cross-examination of the plaintiff, are under certain circumstances allowed, but the plaintiff must also be allowed to file fresh affidavits to meet them.

[20 W. R. 621.]

This was an application adjourned from chambers on the part of the plaintiff to prevent the

defendants from using against him the affidavits filed by them subsequently to his cross-examination. The chief clerk had allowed such a course of proceeding.

Collins, for the plaintiff, cited *Mayer v. Mayer*, 14 W. R. 169.

Yate Lee, for the defendants.—15 and 16 Vic. c. 86, s. 40; Consol. Order, xxxv. Rule 40; Order 1865, Rule 7. As to the discretion of the Court, *Besemere v. Besemeres*, 2 W. R. 124, 1 Kay, App. 17; *Morey v. Vandenburg*, 14 L. T. N. S. 542. *Mayer v. Mayer*, is neither law nor practice.

Collins, in reply.

BACON, V. C.—*Mayer v. Mayer*, is a binding authority. An investigation in chambers is like a trial at law, the defendants have to meet the evidence of the plaintiff. In this instance the defendants did not file their affidavits before cross-examining the plaintiff, which they should have done. The plaintiff must have an opportunity now of filing fresh affidavits, but the defendants also will have a right to reply by affidavits notwithstanding cross-examination.

UNITED STATES REPORTS.

SUPREME COURT OF PENNSYLVANIA.

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

1. A railroad ticket "good for one seat from Philadelphia to Pittsburgh" entitles the holder to one continuous passage from Philadelphia to Pittsburgh in the train into which he enters to be carried, and not by train after train and by broken stage day after day.
 2. If the passenger chooses voluntarily to leave the train before reaching his destination, he forfeits all his rights under the contract.
 3. One who buys a ticket is bound to inform himself of the rules and regulations of the company in running its trains.
- Having left the train in which he started, the fact that he subsequently entered another train and travelled over a portion of the route without being required to pay fare by the conductor in charge of the train, will not prejudice the company or renew the contract.

Error to the Court of Common Pleas of Lancaster County.

May Term, 1872.

Opinion of the Court by AGNEW, J.

This was a judgment of non suit, and the question is, whether the plaintiff's evidence disclosed a case for the jury. Dietrich, the plaintiff, was a drover, residing in Lancaster County. On the 11th of March, 1867, he purchased a drover's ticket from Philadelphia to Pittsburgh, and took passage on the fast line on the defendant's railroad. At Lancaster he got off, and next day (the 12th,) he resumed his journey. When the conductor, Young, came along collecting fares, he declined the plaintiff's ticket on the ground that he had "stopped off," and informed him that such were his orders. Young told him he must get off at Landisville, after passing Landisville, finding him still on the train, Young told him he *must* get off at Mount Joy. At Mount Joy the brakeman put him off, but Young, who observed the brakeman taking him across the track, halloed to him not to put him off in that way; and told Dietrich to get on again. He was then carried to Altoona,