

TRAVELLING BY RAIL.

own, it is their duty to have an agent on the spot to see to such passengers, and if they do not, but allow any one else to act for them, they will be held responsible for the loss of luggage committed to the care of the person so acting for them for delivery on their line: *Jordan v. Fall River R. W.*, 5 Cushing 70.

If a servant carries his master's luggage with and as his own, and the company receive it as the ordinary luggage which his ticket entitles the servant to carry; if the luggage is lost the master cannot recover, although he may have travelled by the next train without any baggage at all, for the contract is with the servant alone: *Becher v. Great Eastern R. W.*, L.R. 5 Q. B. 241: *quære*, could the servant recover, the luggage not being his?

Occasionally the monotony and tedium of a trip is broken and relieved by the sound of a strife of tongues, arising above the din and rattle of the train, and the sight of a conductor struggling either with some poor unfortunate who, having nothing to pay, is endeavoring to reach his desired haven without possessing a talismanic ticket, or with some witty one who has been attempting to palm off a bogus pass or ticket as a *quid pro quo*. Such the conductor is entitled to eject, for the twelfth subsection of section 20 of Railway Act 1868, lays down clearly that "any passenger refusing to pay the fare, may by the conductor of the train and the servants of the company be put off the cars, with his luggage, at any usual stopping place, or near any dwelling house, as the conductor elects, the conductor first stopping the train and using no unnecessary force." Sometimes, however, a conductor is too hasty and errs through excess of zeal, and one with a right to enjoy all the privileges of transportation, is improperly and unlawfully compelled to quit the cars and is left disconsolate and alone beside the track, while the train thunders past him.

If one is ejected unlawfully he has a full remedy at law, for trespass lies against a company for an assault (and the putting out is so considered,) committed by their servants authorized by them to do the act. Such authority, although not given by an instrument under seal, is binding upon the company: *Eastern Counties R. W. v. Brown*, 6 W. H. & G. 314.

The rule is the same between a private person and a railway company as it is where the same matter is in dispute between two private individuals; and the general rule is that a master is not liable for the tortious acts of his servant, unless that act be done by an authority, either express or implied, given him for that purpose by the master: so that the plaintiff is bound to show that the person who turned him off the cars was, not only a servant of the company, but also, that he had authority so to treat him, or that such conduct towards him has been subsequently ratified by them: *Roe v. Birkenhead, Lancaster, &c.*, R. W. 7 W. H. & G. 36. An assault committed on behalf of, and for the benefit of, a corporation is capable of being ratified by them, and if ratified renders them liable in trespass for the act: *Eastern Counties R. W. v. Brown*, *ante*. A person who puts another in his place to do a class of acts in his absence necessarily leaves him to determine, according to the circumstances which arise, when an act of that class is to be done; consequently he is answerable for the wrong of the person so intrusted, either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done, provided that what is done is not done from any caprice of the servant, but in the course of the employment: *Bayley v. Manchester, Sheffield, &c.*, R. W., L. R. 7 C. P. 415.

In the absence of anything to the contrary the court must assume that the conductor is the agent of the company,