

[ORIGINAL CIVIL JURISDICTION.]

1875.
Nov. 27.

Reference from the Court of Small Causes.

SUIT No. 15222 OF 1874.

PRATA'B DA'JI (PLAINTIFF) v. THE BOMBAY, BARODA, AND
CENTRAL INDIA RAILWAY COMPANY (DEFENDANTS).

*Act XVIII. of 1854, Section 17—Act XXV. of 1871, Section 2—Railway
Company—Ticket—Trespass.*

The plaintiff entered a carriage on the defendants' railway at Surat with the purpose of proceeding to Bombay. By an oversight, and without any fraudulent intent, he omitted to procure a ticket at Surat. On arriving at Nowsári, he applied to the station master for a ticket to Bombay, but was refused; he was however allowed by the defendants' servants to proceed in the same train to Balsár, where he again applied for a ticket and was again refused, but was directed by the defendants' servants to get into the train and not leave it again. At Dhándu he again got out and applied for a ticket to the station master. During a discussion between the plaintiff's master and the station master, the plaintiff, at the direction of his master, re-entered the train. Ultimately the station master refused to give the plaintiff a ticket, and ordered him to get out of the train; and on his not complying with this order, sent a sepoy, who forcibly removed the plaintiff from the carriage. In an action by the plaintiff to recover damages for the forcible and illegal removal of the plaintiff from the carriage, and for the illegal detention of the plaintiff at the station at Dhándu, and for the illegal refusal of the defendants to allow the plaintiff to proceed in the train to Bombay :

Held, 1st, that the latter portion of Section 2 of Act XXV. of 1871, amending Section 1 of Act XVIII. of 1854, which provides for payments to be made by persons failing to produce their tickets when demanded by the servants of the Company, applies only to the case of a person who has received a ticket, and will not or cannot produce it, and not to a person travelling without having obtained a ticket with no intention to defraud ;

2nd.—That the absence of a fraudulent intention did not make the entry into the carriage less unlawful, and consequently that the plaintiff started from Surat as a trespasser ;

3rd.—That the conduct of the railway officials at the stations intermediate between Surat and Dhándu, if it amounted at all to leave and license to the plaintiff to proceed without a ticket, could only operate as such until the train stopped at the next station ;

4th.—That there was no legal obligation on the station master to issue a ticket to the plaintiff to enable him to proceed from Dhándu.

THIS was a case referred from the Court of Small Causes at Bombay for the opinion of the High Court under Section 35 of

Act IX. of 1850. It appeared from the evidence that the detention complained of by the plaintiff was not forcible. After he had been ejected from the carriage in which he was sitting, he was told that there would not be another train for Bombay for 24 hours, and on enquiring where he was to pass the interval, was told he might remain in the station. The other facts of the case are fully stated in the judgment.

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At the hearing of the reference before WESTROPP, C. J., and SARGENT, J.,

Farran, for the defendants in support of the rule for a new trial.—The plaintiff not having a ticket was a trespasser, and as such liable to be removed: Act XVIII. of 1854, Section 17. There was no waiver of the trespass on the part of the defendants, as the guard and porters who at Nowsári and again at Balsár suffered the plaintiff to proceed, were acting beyond the scope of their authority in so doing. At any rate, the plaintiff became a trespasser at Dhándu in refusing to leave the train when ordered to do so by the station master. The latter was not bound to receive the fare tendered to him by the plaintiff after the arrival of the train at Dhándu.

Marriott, for the plaintiff.—The defendants were bound to convey the plaintiff, and therefore he was no trespasser even at Surat; still less can he be held to be a trespasser after Nowsári, whence he proceeded with the express leave and license of the defendants. The plaintiff's obligation to take a ticket is imposed on him by Section 2 of Act XXV. of 1871, amending Section 1 of Act XVIII. of 1854. This section must be read as a whole, and so reading it the defendants might be justified in exacting the penalty therein prescribed for the violation of its provisions, but not in treating the plaintiff as a trespasser. Section 3 of Act XVIII. of 1854 provides only for the case of a passenger travelling without a ticket with intent to evade the payment of his fare, and it is clear that there was no such intent here. The tender of the fare at Dhándu imposed on the defendants the common law obligation of carriers to carry the plaintiff.

Farran, in reply.—The leave and license, if any, was determinable at the will of the defendants, and they determined it at Dhándu. The latter portion of Section 2 of Act XXV. of 1871,

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amending Section I of Act XVIII. of 1854, applies only to the case of a passenger who has taken a ticket but fails to give it up when required. It would be unreasonable to expect the defendants to issue tickets and accept the tender of a fare whenever and wherever required to do so.

Cur. ad. vult.

The judgment of the Court was delivered on November 27th 1875 by

SARGENT, J.—This matter comes before us on a case stated for the opinion of the High Court under Section 35 of Act IX. of 1850, and arising out of an action brought by the plaintiff, in the Small Causes Court, to recover from the defendants the sum of Rs. 200 as damages for the forcible and illegal removal of the plaintiff from one of the defendants' carriages at Dhándu station, and for illegal detention at the aforesaid station, and for illegal refusal of the defendants to allow the plaintiff to proceed in the train to Bombay. At the hearing of the cause, the Fourth Judge of the Court was of opinion that the defendants had committed the several illegal acts with which they were charged, and passed judgment for the plaintiff for the full amount of his claim and costs. A rule *nisi* was obtained by the defendants for a new trial, and came on for argument before the First and Fourth Judges of the Court, who were divided in their opinion,—the First Judge being of opinion that there had been no illegal removal of the plaintiff from the carriage, nor illegal detention; and that, even supposing (which the learned Judge did not admit) that the defendants' servant was bound to give the plaintiff a ticket on tender of the fare at Dhándu, still that as the plaintiff did not say he had suffered any damage from the defendants' refusal to give him a ticket, the plaintiff's claim of Rs. 200 could not be supported, and that, therefore, the rule should be made absolute. The Fourth Judge, on the other hand, adhered to the opinion he had expressed at the hearing, and held that the rule *nisi* should be discharged. The facts, so far as they are material, are stated in the case as follows:—"On the 30th June 1874, the plaintiff, who is a sepoy in the service of Tyrrell Leith,

Esq., Barrister-at-Law, was with his master at Surat, and his master being about to proceed by the defendants' railway to Bombay, the plaintiff, in attendance on his master, got into the train at Surat, his master being in another carriage in the same train; and the plaintiff and his master started by the train for Bombay. When the plaintiff got into the train at Surat, he had no ticket, nor had any been taken by him or on his behalf by his master or any other person. The omission by the plaintiff to procure a ticket arose from a mere mistake or misunderstanding, and there was not on the part of the plaintiff or his master at any time any intention of evading the payment of his fare or of travelling without a ticket. In fact the plaintiff supposed that his master had a ticket for him, while his master was under the belief that the plaintiff had his own ticket. At Nowsári station the plaintiff, for the first time, ascertained that his master had no ticket for him. His master immediately provided him with money to buy one, and the plaintiff applied to the station master at Nowsári for a ticket to Bombay, but was refused, on what grounds it does not distinctly appear, but he was permitted by the defendants' servants to proceed in the train without a ticket. When the train arrived at Balsár, the plaintiff again applied for a ticket, but again failed to get one, and the guard of the train put him into the carriage and warned him not to get out again, as the train stopped a very short time at the stations south of Balsár. On arrival at Dhándu the plaintiff again got out, and applied to the station master there for a ticket, and explained to the station master how he happened to be without one. An explanation of the matter was also offered by the plaintiff's master to the station master, who, however, refused to give the plaintiff a ticket. While at Dhándu, and while a discussion was going on between the plaintiff's master and the station master about the case, the plaintiff's master ordered the plaintiff to get into his carriage and remain there while he (Mr. Leith) would arrange matters with the station master. There is no doubt, and we find as a fact, that the plaintiff was all along ready and willing to pay for his ticket, and that at Dhándu, Mr. Leith, on behalf of the plaintiff, offered to pay any sum that might be demanded by the station master, provided the plaintiff was given a ticket. The station master,

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however, refused to give him one, and finding that the plaintiff had gone into the train again, ordered him out, and, on the plaintiff not coming out of the carriage, sent a sepoy who forcibly removed the plaintiff from the carriage. The plaintiff, being unable to obtain a ticket from the defendants' servants at Dhándu and not being allowed to enter the train without one, was left behind at Dhándu, and was practically unable to go to Bombay before the departure of the next train for Bombay, which involved a detention of 24 hours. Before the arrival of the next train, he purchased a ticket and proceeded in that train to Bombay." In this state of facts, the important question for determination is whether the plaintiff was in the train at Dhándu station under circumstances which constituted him a trespasser. If the Company were entitled to regard him as such, then, whether under the express provision of Section 17 of Act XVIII. of 1854, or in exercise of the right which the law accords to every proprietor to remove a trespasser, using only such force as may be necessary for the purpose, the defendants were, we cannot doubt, justified in removing the plaintiff from the train. It was contended, however, for the plaintiff that, although Section 2 of Act XXV. of 1871 makes it unlawful for a passenger to enter a carriage without having first paid his fare and obtained a ticket, still that such prohibition must be read in connection with the rest of the section; and that as it expressly provides that in case the traveller does not produce his ticket, he is to pay the fare or increased fare, the Company might enforce that provision, but could not treat the plaintiff as a trespasser. This argument, assuming that the section is to be read as a whole, derives some support from the remarks of Coleridge, J., at the conclusion of the judgment in the *Great Northern Railway Company v. Harrison* (1), but it is not necessary for us to express an opinion on the point, as we think that the latter part of the section applies only to the case of a person who has received a ticket, and will not or cannot produce it, and not to a person, as in this case, travelling without having paid for and obtained a ticket, with no intention to defraud. Such was the construction placed on identically the same words embodied in a bye-law of the Lancashire and York-

(1) 23 L. J. Exch. 308, see p. 310.

shire Railway Company in the case of *Dearden v. Townsend* (1): "It seems to me," says Cockburn, C.J. (2), "that the bye-law relates to the case of a person having a ticket, but failing to conform to the regulations of the company by producing it;" and Lush, J., says—(3): "The bye-law seems only to be pointed at what is to be done with the ticket with which the passenger is required to provide himself and at the consequence of not producing and delivering it up as required." Lastly, it was urged that there was no fraudulent intention. Now, a fraudulent intention is doubtless by Section 3 of Act XVIII. of 1854 made an essential condition of travelling on a railway without payment of the fare being dealt with as an offence; but the absence of such intention does not make the entry into the carriage less unlawful, or of itself afford any ground for depriving the Company of the right of putting an end to such unlawful occupation. Having started, therefore, from Surat under circumstances which, we think, entitled the Company to treat the plaintiff as a trespasser, the question arises whether anything subsequently occurred which changed the character of his occupation of the carriage. It appears that at Nowsári station, having for the first time ascertained that his master had not taken a ticket for him, the plaintiff applied to the station master for a ticket, but was refused. He was, however, allowed to continue his journey. At Bálásár the plaintiff repeated his attempt to obtain a ticket, but was again refused. However, he was allowed by the guard to proceed with the train, and did so until it arrived at Dhándu. This conduct on the part of the railway officials at intermediate stations, if indeed it amounted to leave and license to the plaintiff to travel in the train without a ticket, could only operate as such until the train stopped at the next station. On arriving at Dhándu, where it appears tickets are examined, both the plaintiff and his master, on his behalf, made strenuous efforts to obtain a ticket, offering at the same time to deposit with the station master any sum he might require. Not only, however, was this refused, but the plaintiff was forbidden by the station master to enter the carriage, and upon his doing so, was removed by his orders and not allowed to continue his journey to Bombay. The

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(1) 1 L. R. Q. B. 10.

(2) *Id.*, 14.(3) *Id.*, 15.

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Judge, who tried the cause, held that the station master was bound to give the plaintiff a ticket, and if this were so, it might be that the station master would not have been justified in treating the plaintiff as a trespasser and removing him. We are, however, of opinion that there was no such legal obligation. The common law right of a traveller to be conveyed, by the carrier of passengers on his readiness to pay the usual fare, is subject to the condition that he offer himself as a passenger at a reasonable time and place. It would be most inconvenient and unreasonable, we think, regarded from a public point of view, were we to hold that a passenger by a train has a right to require the station master, on the arrival of the train at an intermediate station, to leave the platform, where he has special duties connected with the train and passengers, and return to his office for the purpose of procuring him a ticket. It is the general practice at intermediate stations for the station master to close the office for the distribution of tickets on the arrival of the train. This practice has been adopted to enable the officials, and more especially the station master, to attend to the particular matters which arise during the stoppage of the train in the station; and we can see no ground upon which a passenger by a train can claim to have the distribution of tickets resumed on his behalf, which had been already closed for the public outside the station. In the present case, moreover, it would have been necessary, in the first place, for the station master to have heard the plaintiff's story; decided upon its correctness; and determined what he was bound to pay as far as Dháandu, before he could, with due regard to the interests of the Company, have given him a ticket from Dháandu to Bombay; as otherwise it is plain that the fare from Surat to Dháandu might have been lost to the Company. We think, therefore, that there was no such legal obligation on the part of the Company to furnish the plaintiff with a ticket as was contended for; and that the station master was, under the circumstances, justified in removing the plaintiff from the train. The rule must, therefore, be made absolute. Parties to pay their own costs of the rule for a new trial and of the reference.