GRAND TRUNK PACIFIC COAST STEAMSHIP COMPANY (DEFENDANT)..... APPELANT;

1922

*Feb. 8, 9.
*Mar. 29.

AND

MARIE SIMPSON (PLAINTIFF)..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Carrier—Contract of carriage—Passenger—Ticket—Conditions—Exemption from liability—Knowledge of passenger—Reasonable notice to passenger—Evidence for jury.

The respondent paid the appellant passage money for a voyage on their steamer and received a transportation ticket. The document handed to the respondent was at the outset called "this ticket"; the words "subject to the following conditions" were found in the tenth line of a paragraph of small type; there was no heading such as "conditions"; the seventh paragraph stipulated that "the company * * * (was) not * * * liable for * * * "injury to the passenger * * * arising from the * * * "negligence of the company's servants * * * or from other "cause of whatsoever nature"; at the end of a series of eleven distinct conditions, occupying sixty-six lines of small type closely printed, were the following words: "I hereby agree to all the provisions of "the above contract"; and then blank spaces were provided for signatures by the purchaser and a witness. The ticket sold had been destroyed by the appellants, but the jury found that the respondent had not put her signature to it. The respondent also denied knowledge of any conditions relating to the terms of the contract of carriage. The respondent, in debarking from the steamer, was injured and sought damages from the appellant. The above facts having been proved at the trial, the jury found that the respondent knew there was printing on the ticket, but did not know that the printing contained conditions limiting appellant's liability and that the appellant did not do what was reasonably sufficient to give her notice of the conditions; and they found a verdict for her.

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin, Brodeur and Mignault.

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Held, Davies C.J. dissenting, that there was evidence upon which the jury could properly find as they did and that judgment was properly entered for the respondent upon the findings. *Richardson, Spence & Co.* v. *Rowntree* ([1894] A.C. 217) discussed; *Cooke* v. *T. Wilson, Sons & Co.* (85 L.J.K.B. 888) distinguished.

APPEAL from the judgment of the Court of Appeal for British Columbia, affirming the judgment of Macdonald J. with a jury and maintaining the respondent 's action.

The material facts of the case and the questions in issue are fully stated in the above head-note and in the judgments now reported.

Alfred Bull, for the appellant.—The words "negligence of the company's servants" include any act for which the appellants could be liable in law, as the company could only act through a servant. *Ferguson* v. *Wilson*. (1).

The general words "or from any other cause of whatsoever nature" should not be construed *ejusdem generis* with the particular words preceding them. *Larsen* v. *Sylvester* (2).

There was no evidence to support the jury's findings that the respondent did not know that her ticket contained conditions respecting exemption of liability and that the appellant company did not do what was reasonably sufficient to give the respondent notice of such conditions: *Hood* v. *Anchor Line* (3); *Cooke* v. *T. Wilson Sons & Co.* (4); *Grand Trunk Railway Co.* v. *Robinson* (5); *Sherlock* v. *The Grand Trunk Railway Co.* (6); *Acton* v. *Castle Mail Packets Co.* (7).

(1) 2 Ch. App. 77.
(2)]1908] A.C. 295.
(3) [1918] A.C. 837.
(4) 85 L.J.K.B. 888.
(5) [1915] A.C. 740; 12 D.L.R. 696.
(6) 62 Can. S.C.R. 328.
(7) [1895] 73 Law Times 158.

Geo. F. Henderson K.C. for the respondent.—The mere handing of a ticket containing conditions, with nothing on the ticket to draw attention to its contents, does not constitute what is reasonably sufficient to give the passenger notice of such conditions: *Henderson* v. *Stevenson* (1); *Richardson, Spence & Co.* v. *Rowntree* (2); *Clarke* v. *West Ham Corporation* (3).

THE CHIEF JUSTICE.—(dissenting)—I find myself, after weighing fully the able argument at bar of Mr. Bull for the appellant and, after considering carefully the cases cited by him in support of the appeal, strongly of the opinion that the appeal should be allowed.

The Court of Appeal decided against the now appellant on the ground

> that the fair inference that the jury found by their answers that there was negligence on the part of the company itself, apart from the negligence of its servants, and that it caused the accident or contributed to it.

I have no doubt whatever that this ground for sustaining the judgment against the company cannot be upheld and on this point I find myself in full accord with the rest of my colleagues.

The main question, however, argued fully at bar and on which Mr. Bull relied was that the negative answers of the jury to questions 8 and 9, whether the plaintiff knew that her ticket contained conditions limiting the liability of the defendant company (8), and whether the company did what was reasonably sufficient to give the plaintiff notice of such conditions (9), were contrary to the evidence and must be set aside.

(1) [1874] L.R. 2 H.L. Sc. 470. (2) [1894] A.C. 217.
(3) [1909] 2 K.B. 858.

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In my opinion the appeal turns upon the answers of the jury to question (9), namely, whether the company did what was reasonably sufficient to give the plaintiff notice of such conditions.

The jury found also that the plaintiff did not sign the ticket covering her passage from Prince Rupert to Stewart in British Columbia, and while I should be otherwise personally inclined to hold the contrary, I am not disposed on this point to interfere with this finding of the jury and will deal with the case on the ground I have before mentioned and on the assumption that the ticket was not signed.

I think it clear from all the decided cases cited to us, which I have carefully read and considered, that no arbitrary or definite rule can be or has been laid down governing the question whether the ticket-holder must be held to have known the conditions, if any, on the ticket he purchased. It is purely a question of fact in each case and the findings of the jury will not be interfered with on the fact unless found to be clearly contrary to the evidence.

Much depends upon the question whether the purchaser of a ticket was an ignorant and illiterate person unaccustomed to travel, in which case a heavy onus would be cast upon a company of bringing to his or her notice the limitations of their liability as a carrier of passengers, or, on the contrary, whether the purchaser of the ticket was a person of education, intelligence and experience, in which case on having the ticket put in front of him he ought to have seen that he had what he had applied for, namely a passenger contract, and having seen that ought to have seen that he was entitled to a berth, if that was included, subject to the conditions on the ticket, and having seen that ought to have seen all the rest.

Of course if the ticket handed the passenger was folded up, or enclosed in an envelope, it would, or might, under the facts of the case, limit his duty of seeing the conditions of his contract. Indeed there are many other facts and circumstances which the authorities mention which might dispense with or qualify his strictly conforming to that duty.

But in the absence of any such facts and circumstances as in the case before us, it does seem to me clear from the authorities that an educated and intelligent person accustomed to travel and looking after herself as the plaintiff in this case undoubtedly was, must, on purchasing a ticket as the plaintiff did in this case, with conditions on its face limiting the company's liability for her carriage, be held bound to have known what these conditions were.

The facts were that the plaintiff's journey was in reality from Seattle to Stewart, but was broken at Prince Rupert, and she indentified Exhibit 3 (the form of ticket issued by the company) as similar to that which she had purchased in Seattle covering her passage to Prince Rupert, which ticket she admits she signed. She was unable to say definitely that she did not sign the ticket which she afterwards purchased in Prince Rupert covering her passage to Stewart, but having signed the ticket in Seattle it must follow that she knew not only that the ticket contained conditions, but, moreover, the effect of such conditions and having admitted the similarity of the two it follows that she must have known, whether she signed it or not, that the ticket in question contained conditions. The plaintiff was a woman of education and itelligence; her husband was a lawyer and for some years police magistrate

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of Nanaimo; she had travelled considerably, and during the war travelled from British Columbia to Nairobi, Africa, and back, by herself, and formed a habit of looking at her transportation tickets to ascertain that her destination was correctly stated; she probably did so in respect of her ticket to Stewart; she knew that tickets of that nature usually contained conditions as to loss of baggage; there was no rush, no crowd at the wicket, when she bought her ticket a day or two before the sailing date; she at the same time arranged about her cabin. All this she stated in cross examination and there is no conflict of evidence as to the facts on which the appellant relies.

Now the ticket given the plaintiff was an exact counterpart of Exhibit 3, which was put in evidence, and which we had the opportunity of examining carefully. It is a long piece of greenish coloured paper, about 10 inches long and two inches broad headed thus:

GRAND TRUNK PACIFIC COAST S.S. CO. LTD.

FORM 32.

PRINCE RUPERT, B.C.

TO

DESTINATION NAMED ON FINAL COUPON

It is agreed that this ticket is good only when officially stamped, dated and presented *with coupons attached* for one first class passage * * * *subject to the following conditions:*

then follow the eleven conditions, no. 7 of which contains the limitations of the company's liability relied on. But that was not all. The coupons attached state in large print the place of departure, leaving

blanks for the place of destination to be written in, the date and the number of the stateroom, and what is more important, printed in clear type on its face

including meals and berth when officially stamped and dated, and on *conditions named in the contract.*

So that we have this "large plain piece of paper put before a lady of intelligence" who is going to be a first class passenger on board of this ship, stating not only in its opening sentence,

it is agreed that this ticket is good only when officially stamped, dated and presented *with coupons attached* for one first class continuous passage * * * *subject to the following conditions,*

but having the same notice printed in clear easily read type on the coupon itself "on conditions named in the contract."

To lay it down as law that under these proved facts and circumstances the ticket purchaser, a woman of intelligence and education, who had travelled extensively, could by simply not reading, or saying she had not read, her ticket contract and did not know its conditions, avoid the effect of those conditions and recover damages for injuries she sustained during the voyage arising from the negligence of the defendant company's servants, from which the ticket contract plainly exempted them from liability is, in my humble opinion, contrary to the decisions of the highest courts of law in England which by the very terms of the contract were to govern in this case.

I think it a dangerous rule to lay down and under the facts of the present case I must decline being a party to it.

The cases on which I rely and which I have carefully read, especially that of *Cooke* v. *Wilson & Co.* (1), confirm me in my opinion. This case is singularly

(1) 85 L.J.K.B. 888.

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alike in its facts and almost on all fours with the present appeal. I am quite unable to distinguish it in any material way from the case we are considering.

The other cases are *Hood* v. *Anchor Line* (1) in which Lord Haldane delivering the judgment of the Judicial Committee said:

> When he accepted a document that told him on its face that it contained conditions on which alone he would be permitted to make the journey across the Atlantic aboard steamer, and then proceeded on that journey, I think he must be treated according to the standards of ordinary life applicable to those who make arrangements under analogous circumstances and be held as bound by the document as clearly as if he had signed it.

And *Richardson, Spence & Co.* v. *Rowntree* (2) where a distinction is drawn between a ticket handed to a steerage passenger, a class of people as said by Lord Ashbourne

> of the humblest description, many of whom have little education and some of whom have none.

and such a ticket not folded up handed to a passenger of intelligence and education such as the plaintiff herein.

Under all the circumstances, I conclude that on the question of reasonable notice having been given to the plaintiff, the answer must be in the affirmative.

IDINGTON J.—This action was brought by the respondent to recover damages suffered by her for which it seems quite clear the appellant would be liable unless protected by the terms alleged to be conditions in the contract for transportation from Prince Rupert to Stewart.

The alleged conditions were printed in small type and numbering eleven in all, without any notice calling attention thereto.

(1) [1918] A.C. 837. (2) [1894] A.C. 217.

The appellant evidently had adopted a system of requiring the passenger to sign these conditions and having the signature witnessed as the only means of bringing home to the mind of any intending passenger the terms upon which he or she should be carried.

The usual test of whether or not the carrying company had done all that was reasonably sufficient to give the intending passenger notice of the conditions upon which he or she was to be carried, as exemplified in the cases cited to us cannot be applied to this case for they are non-existent.

Neither notice of the ticket being subject to the conditions thereon printed, or usual warning of any kind, appears in this case to have been adopted.

The appellant must therefor rely upon proof of the signature of the respondent which is expressly negatived by the finding of the jury, as is also knowledge of the conditions.

The further question was put by the learned trial judge to the jury, and answered in the negative:—

> 9. If not, did the defendant company do what was reasonably sufficient to give the plaintiff notice of such conditions? A. No.

The jury, I think, were, under such facts and circumstances as in evidence, fully entitled to take that view. Possibly I might not have reached such a conclusion, but I cannot say they had no evidence entitling them to so find.

The evidence of the respondent's intelligence on the subject of travel and its attendant conditions was not, to my mind, according to her evidence, of the extensive character counsel seemed to urge, if we apply common sense to what she says.

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Holding as I do that this case is quite distinguishable from the cases of *Cooke* v. *Wilson* (1); *Hood* v. *Anchor Line Ltd.* (2) and many others, I am of the opinion that the appellant should not succeed in face of the findings of the jury as applied to this peculiar case, and, therefore, have not considered fully the ground proceeded upon by the Court of Appeal.

If that is not sound reasoning then on the facts in evidence it ought to be made the law that a steamship company should not be permitted to turn out or invite passengers to land on such a dock as the one in question, (publicly claimed by its owner, as it seems to have been, to be in a dilapidated condition) without taking due care.

I think the appeal should be dismissed with costs.

DUFF J.—I concur with Mr. Justice Anglin.

ANGLIN J.—The plaintiff in debarking, by invitation of the defendants, from their steamer, on which she was a passenger, on a wharf admittedly in a highly dangerous state of disrepair, was seriously injured. The immediate cause of her injury was stepping into a hole, which she failed to see at the end of the gangway, and slightly to the right, while endeavouring to avoid stepping into another hole to the left. The jury found—and their finding is not open to serious question indeed it was scarcely challenged—that there was negligence *dans locum injuriæ* on the part of the defendants in permitting the plaintiff to land on a wharf known to be dangerous. The duty of a carrier of passengers to provide a reasonably safe place for them to debark admits of no dispute. It is part of the obligation ordinarily undertaken in the contract of carriage.

(1) 85 L.J.K.B. 888. (2) [1918] A.C. 837.

The defendants seek to escape liability by invoking an exemption stipulated in the terms of the special contract upon which they allege the plaintiff travelled. In answer to this defence, the plaintuff urges (*a*) that the defendants cannot raise it because they failed to give the public notice of the conditions excluding their liability prescribed by s. 962 of the "Canada Shipping Act" (R.S.C. 1906, c. 113); (*b*) that upon their true construction these conditions, if binding upon the plaintiff, do not cover the negligence complained of; (*c*) that the plaintiff was not bound by the conditions, because she was unaware of them and adequate means had not been taken by the defendants to bring them to her attention.

(*a*) This reply to the defence was not pleaded, nor, so far as appears, raised at the trial. The question of public notice was not threshed out. Assuming that s. 962 of the "Canada Shipping Act" bears the construction put upon it by counsel for the plaintiff, which is at least debatable, the defendants would probably have reasonable ground to complain if it were now held to preclude them from invoking the conditions on which they rely.

(*b*) The Court of Appeal held that the negligence found was that of the plaintiff company itself as distinguished from that of its servants and that upon its true construction the exemption from liability stipulated by the terms printed on the ticket issued to the plaintiff is confined to negligence attributable to the defendants' servants. With great respect, I gravely question the soundness of the view taken on both points. I incline to think that the failure to select for the placing of the gangway a part of the wharf on which a landing could be made with reasonable safety, if such a spot existed, or, if not, to take other adequate precautions

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to ensure the plaintiff's landing safely was fault ascribable to the company's servants charged with the management of the debarkation of passengers. Upon the construction of the relieving condition itself, while negligence of servants is no doubt specified, the exemption is also in respect of

> injury to the passenger * * * through any other cause of whatsoever nature.

In view of the context there would seem to be difficulty in applying the *ejusdem generis* rule of construction to these comprehensive words so as to give them the restricted effect for which the plaintiff contends.

(*c*) But the jury also found that, while the plaintiff knew there was writing or printing on her ticket, she did not know that it contained conditions limiting the defendant's liability and that they had failed to do what was reasonably sufficient to give her notice of these conditions. On this branch of the case the question to be considered is whether these findings are so clearly against the evidence that they should be set aside as perverse.

As to the finding of ignorance in fact there can be no doubt. The plaintiff expressly denied knowledge, and there is nothing to warrant rejecting her testimony accepted by the jury.

As to the other finding, the jury explicitly found that the plaintiff had not signed the ticket, as the form used contemplated (places being indicated upon it for signatures of the purchaser and of a witness) and the company's agent deposed was the practice. The plaintiff's recollection was that she did not sign—was not asked to do so. The selling agent had no recollection on the point. It would be quite impossible to disturb the finding that the ticket had not been signed.

There is no suggestion that the plaintiff's attention was drawn to the conditions in any other way than by handing her the ticket itself when she bought and paid for it. She deposed that although she knew there was printed matter upon the ticket, she had not read it beyond noting that her destination was correctly written in on the attached coupon. She knew from a former experience that conditions limiting liability in respect of luggage were sometimes imposed, but nothing as to conditions in respect of personal injuries. This idiosyncracy, however, having been unknown to the defendant's ticket agent need not be further considered here, *Marriott* v. *Yeoward* (1). Can it be said upon these facts that the finding of the jury that what took place was not reasonably sufficient to give the plaintiff notice of the conditions was so clearly perverse that we should set it aside, make a finding to the contrary and direct judgment for the defendants?

The case at bar closely resembles the leading case of *Richardson, Spence & Co.* v. *Rowntree* (2). There, as here, the plaintiff was a woman, though probably of a less intelligent class; she was a steerage passenger. The restrictive conditions were printed in small type on the face of the ticket, and without anything, such as the word "NOTICE" in large type, featured in *Hood* v. *Anchor Line* (3), to draw attention to them. The only other possibly distinguishing feature in the *Rowntree Case* (2) is that the ticket was handed to the passenger folded up Here we are not informed

(1) [1909] 2 K.B. 987 at p. 993. (2) [1894] A.C. 217.
(3) [1918] A.C. 837.

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whether the ticket was open or folded up, or enclosed in an envelope, when handed to the plaintiff. From its length and their common knowledge of what is customary the jury not improbably inferred that it was folded up and possibly also that it was placed in an envelope. The judgment of the Court of Appeal in *Rowntree's Case* (1), refusing to set aside the jury's findings, that the plaintiff did not know that the ticket contained conditions relating to the terms of the contract of carriage and that the defendants had not done what was reasonably sufficient to give the plaintiff notice of the conditions, and upholding the judgment entered on them for the plaintiff, was affirmed by the House of Lords without calling upon counsel for the respondent. Their Lordships declined to hold that upon such facts the plaintiff was bound as a matter of law by the conditions. The questions whether the passenger knew of the conditions limiting liability and, if not, whether the means taken to bring them to her attention had been reasonably sufficient, were held to be proper in such a case for submission to the jury. This case was much relied on by counsel for the plaintiff.

Counsel for the defendants on the other hand contended that the case at bar is indistinguishable from the later case of *Cooke v. T. Wilson Sons & Co. Ltd.* (2) in which the Court of Appeal, while recognizing the authoritative character of the decision in *Rowntree's Case*, (1) held that, upon the facts in evidence, the finding of the jury that the defendants had not done what was reasonably sufficient to give the plaintiff notice of the conditions was so clearly perverse that

(1) [1894] A.C. 217.

(2) 85 L.J. K.B. 888.

it should be set aside and that judgment should be entered for the defendants. Roberta Cooke was "a lady of intelligence" —"a first-class passenger"— "a lady of education"—facts

which must have been obvious to the people who handed her the ticket.

The following three circumstances in connection with the ticket itself are dwelt upon by Lord Justice Phillimore, who delivered the principal judgment. The ticket did not describe itself as a "ticket" or "receipt" but was headed "Passenger Contract". In the first line and in very plain letters were the words "Mrs. Cooke is entitled, subject to the conditions hereof". The conditions themselves immediately followed in small but legible type, similar, I take it, to that in the case at bar, but under the heading "Conditions". There appears to have been nothing to indicate that signature by the passenger, to evidence her acceptance of the conditions, was contemplated, as it clearly was in the case at bar. Lord Justice Phillimore points to the several features of the ticket I have mentioned as calculated to draw the attention of the passenger to the fact that she was taking a "passenger contract" for carriage subject to conditions printed on the ticket. Pickford L.J. agreeing states that, the proper question being formulated, the answer to it becomes a question of fact in each particular case and adds:

All I say is that upon the particular facts of this case, in my opinion, the defendants took sufficient and proper means to bring these conditions to the notice of the plaintiff.

Neville J., the other member of the court, said:

If all the cases are to be taken into consideration * * * the degree of notice necessary depends upon the degree of capacity of the recipient.

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I take it the learned judge must have meant—as it was, or should have been, apparent to the defendants' agent when selling the ticket to the passenger. His Lordship also explicitly restricts his holding to

passenger contracts of the character of the one before him.

While it may be assumed that in the case now before us there was nothing to indicate to the defendants' ticket agent that the plaintiff might not be dealt with as a person endowed with a degree of intelligence not inferior to that of the plaintiff in the *Cooke Case*, (1) the features of the "passenger contract" in that case pointed out in the judgment of Phillimore L.J. as calculated to bring the conditions to the passenger's attention are entirely absent here. The document handed to the present plaintiff is at the outset called "this ticket": the words "subject to the following conditions" are found only in the tenth line of a paragraph of small type: and there is no heading such as "conditions". At the end of a series of eleven distinct conditions, occupying sixty-six lines of small type closely printed, occur the words

I hereby agree to all the provisions of the above contract and attached coupons.

.....
Signature.

.....
Witness.

The provision thus made for signatures by the purchaser and a witness might well give to the plaintiff, or to any ordinary traveller of her class, the impression that the printed matter above the line indicated for purchaser's signature was not intended to apply to her—did not concern her—since she had not been

(1) 85 L.J. K.B. 888.

asked to affix her signature to it. It is, I think, quite impossible to say that the decision in the *Cooke Case* (1) conclusively establishes that in the case at bar what the defendants did was reasonably sufficient to bring the conditions printed upon the ticket to the notice of the plaintiff as something by which she would be bound.

Another case relied on for the appellant was *Acton* v. *The Castle Mail Packets Co.* (2), where Lord Russell of Killowen quotes with approval from the judgment of Mellish J. in *Parker* v. *South Eastern Railway Co.* (3), the statement that where the agreement is not signed

> there must be evidence independently of the agreement itself to prove that the (plaintiff) has assented to it;

and also the following passage from p. 422:

> I am of the opinion that we cannot lay down as a matter of law either that the plaintiff was bound or that he was not bound by the conditions printed on the ticket from the mere fact that he knew there was writing on the ticket but did not know that the writing contained conditions.

In the *Acton Case* (2) the plaintiff was

> an intelligent man who had gone about the world

and, in the opinion of the Lord Chief Justice, ought to have known that conditions would necessarily be attached to the passage he was engaging.

> In the circumstances of this case (said his Lordship) the plaintiff ought to have assumed, and I think he must have known that (the ticket) probably did contain conditions upon which he was about to be carried.

Sitting as a trial judge without a jury, Lord Russell reached the conclusion that, as

(1) 85 L.J. K.B. 888. (2) 73 L.T. 158.
(3) 2 C.P.D. 416, at p. 421.

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a matter of fact * * * the communication of that document to him was (in the circumstances of this case) reasonable notice to him of the terms and conditions upon which his passage money was received from him and upon which the defendants were willing to enter into a contract to carry him.

The conclusion reached apparently depended almost entirely upon the impression created by the appearance and demeanour of the plaintiff and his business experience upon the mind of the learned trial judge that he must have appreciated the fact that the printing upon the ticket contained conditions to bind him as terms of the contract of carriage.

In *Hood* v. *Anchor Line* (1) another case cited for the appellant, it is made abundantly clear that the question with which we are now dealing is one of fact which must be submitted for determination by the tribunal of fact, the function of the judge, where there is a jury, being simply to see that the proper question is considered by them and the duty of the jury being to determine it, looking at all the circumstances and the situation of the parties. The burden is on the defendant to shew that it has done all that could reasonably be required to bring the limitative conditions to the plaintiff's notice

under the usages of proper conduct in the circumstances.

Emphasis was laid in Hood's case upon two facts:— Above the conditions was printed

NOTICE: This ticket, is issued to and accepted by the passenger subject to the following conditions.

At the foot of the document was printed very plainly in capital letters "PASSENGERS ARE PARTICULARLY REQUESTED TO CAREFULLY READ THE ABOVE CONTRACT" and on the face of the

(1) [1918] A.C. 837.

envelope containing the ticket was again printed, also in capitals "PLEASE READ CONDITIONS OF THE ENCLOSED CONTRACT". The case was tried without a jury and their Lordships of the House of Lords agreed with the conclusion of the trial judge, affirmed by the Court of Sessions, that the company had done all that was reasonably necessary to give notice to the plaintiff of the conditions limiting its liability. Their Lordships again pointed out that the questions under consideration were questions of fact which must in each case be determined according to the circumstances in evidence.

The principles to be applied in determining the question of fact which we are considering are well stated by Pickford J. in *Marriott* v. *Yeoward Brothers* (1).

In dealing with a case such as this it is well to bear in mind the observation of Viscount Haldane in *Kreglinger's Case* (2) that

> when a previous case has not laid down any new principle, but has merely decided that a particular set of facts illustrates an existing rule, there are few more fertile sources of fallacy than to search in it for what is simply resemblance in circumstances, and to erect a previous decision into a governing precedent merely on this account. To look for anything except for the principle established or recognized by previous decisions is really to weaken and not to strengthen the importance of precedent. The consideration of cases which turn on particular facts may often be useful for edification, but it can rarely yield authoritative guidance.

The only principles established by the cases to which we have been referred in regard to the question whether the carrier has done what was reasonably sufficient to bring conditions limiting its liability printed upon a ticket to the attention of a purchaser, who does not acknowledge acceptance of them by his signature and has not read them and does not know

(1) [1909] 2 K.B. 987 at p. 992. (2) [1914] A.C. 25, at p. 40.

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them to be such conditions, are that it is always a question of fact to be determined in each particular case according to the particular circumstances of that case and that the burden of proof is on the carrier.

Taking into account all the circumstances in evidence as above detailed, I am not prepared to say that the conclusion of the jury (who had the great advantage of seeing and hearing the plaintiff give her evidence) that the company had failed to discharge the onus of proving that it had done what was reasonably necessary to bring the conditions relied upon to her attention as something by which she was to be bound was so clearly perverse that it should be set aside. Having regard to the facts that the purchaser of the ticket was a woman, presumably of limited business experience and knowledge, that the ticket itself presented nothing calculated to draw her attention to the fact that the printed matter upon its face contained conditions of a contract of carriage by which it was intended that she should be bound (such as the features noted in the *Cooke Case* (1) and the *Hood Case* (2), and to the further fact of the indication on the face of the ticket of the intention of the company that it should be signed by the purchaser as evidence of acceptance of the conditions printed upon it, it seems to me that a jury could reasonably conclude that it was incumbent upon the defendants to do something more than the evidence discloses was done in this case to direct the plaintiff's attention to the conditions.

Indeed when the facts are analysed we have merely the case of a ticket containing printed conditions not at all conspicuous being sold to a woman of ordinary

(1) 85 L.J. K.B. 888. (2) [1918] A.C. 837.

intelligence. In *Cooke's Case* (1), so much relied upon by the appellants, Lord Justice Pickford expressly repudiates the idea

> that in every case it is enough to give a person who can read and write a document which he can read.

I would, for these reasons, dismiss this appeal with costs.

BRODEUR J.—The jury in this case found that the appellant company was guilty of negligence

> in permitting the plaintiff to land on a wharf known to be dangerous and in not providing a step from the end of the gang plank to the wharf.

It is contended, however, on the part of the steamship company that the ticket on which Mrs. Simpson travelled contained a provision that the company would not be liable for the negligence of the company's servants and that the accident of which she was the victim was due to the negligence of its servants. It is contended also that the accident having taken place on a wharf which was common government property it was not liable.

On the latter point I am of opinion that the company's contention is not well founded. The wharf was, it is true, in a dangerous condition, but it was the duty of the company and was part of its obligations arising out of its transportation contract to see that its passengers should be landed in a safe place.

As to the conditions stipulated on the ticket, I may say that the form of the ticket requires that the purchaser should sign and accept those conditions before a witness. The ticket sold in this case was destroyed by the company and could not be produced.

(1) 85 L.J. 888.

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The jury found on somewhat conflicting evidence that Mrs. Simpson never affixed her signature to the document. It was found also by the jury that she was aware that there was something written on the ticket but that she did not know it contained the conditions on which the defendant company relies and that the latter did not do what was reasonably sufficient to give the plaintiff notice of such conditions.

In this connection the defendant company claims that there was no evidence to support the jury's findings.

I am unable to accept such a contention for a great deal of evidence was adduced with regard to the issuing of this ticket and the jury was absolutely justified in making those findings.

The appellant relied very much on the case of *Cooke* v. *Wilson* (1). That case has some features resembling very much the facts we have to deal with in this case, but there is some difference which permits us to distinguish it. The ticket issued in the *Wilson Case* (1) contained in large type the word "contract" which should have immediately drawn the attention of the passenger.

All these cases which have been quoted present different aspects and features and shew that each case should be decided on its own merits.

It is therefore a matter for the jury to determine whether the circumstances shew that the purchaser was aware of the conditions contained in the ticket and whether the carrier has done what was sufficient to give the passenger notice of conditions.

(1) 85 L.J.K.B. 888.

I have come to the conclusion that the verdict of the jury was right and for this reason the appeal should be dismissed with costs.

MIGNAULT J.—I concur with Mr. Justice Anglin.

Appeal dismissed with costs.

Solicitors for the appellants: *Tupper & Bull.*

Solicitors for the respondent: *Barnard, Robertson, Heisterman & Tait.*