1955
**Oct. 26, 27

1956
*Jun. 14
*Oct. 2

UNION STEAMSHIPS LIMITED (*Defendant*) ..... APPELLANT;

AND

ARCHIE BARNES (*Plaintiff*) .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Shipping—Action by passenger for personal injuries due to negligence of ship's servant—Condition limiting shipowner's liability printed on back of passenger's ticket—Passenger not reading ticket—Whether reasonable attempt to bring condition to passenger's attention.

*PRESENT: Rand, Locke, Cartwright, Fauteux and Nolan JJ.

***Reporter's Note:* The appeal was first argued on Oct. 26 and 27, 1955, before Rand, Kellock, Estey, Locke and Fauteux JJ. On Jan. 24, 1956, the Court ordered a rehearing which took place on Jun. 14, 1956.

(1) (1854), 4 De G.M. & G. 206, 43 E.R. 486.

The plaintiff and his family boarded a ship operated by the defendant company in the early hours of the morning. There was no ticket-office on shore, and the plaintiff bought his ticket after he was on board. The ticket bore a notice on its face, in red print, to the effect that it was subject to the conditions printed on the back, and on the back was a condition relieving the defendant from any liability for injury, even if it resulted from the negligence of the defendant's servants. The plaintiff's evidence was that he knew that there was writing on the ticket, but had not read it or looked at the back. The plaintiff was seriously injured, as a result of the negligence of a steward on the ship.

Held (Rand and Cartwright JJ. *dissenting*): The defendant was not liable.

There being no law that prevented the carrier from entering into an agreement with a passenger which would relieve it from liability for injuries caused by the negligence of its employees, the question to be determined was whether the defendant had done what was reasonably sufficient to bring the limitative condition to the buyer's notice, and this was a question of fact. *Grand Trunk Pacific Coast Steamship Company v. Simpson* (1922), 63 S.C.R. 631, explained and distinguished. The trial judge had found that the form of the ticket was a reasonable attempt to bring the conditions under which he would be carried to the attention of the plaintiff, and this finding was conclusive. There was no evidence to support the further finding at the trial that the plaintiff had no reasonable opportunity to read the ticket. His acceptance of the ticket without protest, and embarking upon the voyage, precluded him from now reprobating its terms on the basis that he had not read it. *Grand Trunk Railway Company of Canada v. Robinson*, [1915] A.C. 740; *Hood v. Anchor Line*, [1918] A.C. 837, quoted and applied; *Nunan v. Southern Railway Company*, [1923] 2 K.B. 703 at 707, approved; *Parker v. The South Eastern Railway Company* (1877), 2 C.P.D. 416 at 423, doubted.

Per Rand and Cartwright JJ. (*dissenting*): In the circumstances of this case, it could not be said that the defendant had taken reasonable steps to bring notice of the condition to the attention of the plaintiff.

APPEAL from the judgment of the Court of Appeal for British Columbia (1), affirming the judgment at trial (2). Appeal allowed.

L. S. Eckardt and *A. H. Ainsworth*, for the plaintiff, respondent, at the first hearing.

A. Bull, Q.C., and *J. I. Bird*, for the defendant, appellant, at the first hearing.

L. S. Eckardt, for the plaintiff, respondent, at the second hearing.

J. I. Bird, for the defendant, appellant, at the second hearing.

(1) 14 W.W.R. 673, [1955] 2 D.L.R. 564.

(2) 13 W.W.R. 72, [1954] 4 D.L.R. 267.

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RAND J. (*dissenting*):—The question raised is whether a common carrier of passengers by water is entitled to rely on a condition printed on a ticket providing exemption from liability for negligence as forming a term of the carriage.

The vessel was engaged in a coastal service in British Columbia. The means employed was the printing on the ticket in small type and red ink of a notice that conditions were set forth on the back; and a line was provided for the passenger's name, whether for signature or mere insertion is not made clear. The respondent and his family had been taken aboard about 5 o'clock a.m., December 29, 1951 by means of a sling. Accompanied by them and a steward, he went to the purser's office to purchase passage and stateroom tickets to the next port of call. In the meantime, while the tickets were being purchased, the ship was already on her way out of the harbour. The respondent noticed printing on the face of the passage ticket but did not read it or sign it. He was in a hurry to get his children abed which called for some clothes in the baggage. The steward, accompanied by the respondent for the purpose of pointing out the piece of baggage to be brought up, left the stateroom to go below. The respondent, passing through a door into a dark space, fell down a hatchway and was badly injured.

The rule of law governing that question I take to be this: was what was done by the carrier reasonably sufficient to bring to the attention of the passenger—himself acting with the alertness of the ordinary man—this exceptional condition? Although Canadian courts, in contrast with those of many jurisdictions in the United States, have declined to hold that a common carrier cannot contract out for negligence, yet the requirement of notice laid down is intended to ensure that effective means within the range of reasonable action in the circumstances shall be employed to apprise a passenger of exceptional terms, in derogation of its common law duty, on which the carrier professes to undertake the transportation. Whatever the practicality of the choice presented by such a notice may be, theoretically, what is done must be such as is deemed to have brought notice of it to the patron's attention.

In the circumstances here it seems almost absurd to say that the passenger, already on his voyage, can be said to have been given reasonable notice of such an extreme and unusual term of the ticket, or, as it is put, that the carrier had taken reasonable steps to bring it to his attention. Everything was hurried; his getting aboard, the vessel getting under weigh, the purchase of the tickets with the steward at his elbow, the settling of the family in the stateroom and the hastening for the baggage. One has only to imagine the incongruity of stopping to examine a ticket in such surroundings to ascertain its terms.

It is in these conditions that the company claims to be able to say to him: "We told you that we carried only at your own risk of injury through our negligence and this you accepted." The examination of the ticket would, in those circumstances, be made by no person and none would anticipate such a condition. With an intention to carry passengers only at their own risk, one would have thought that common candour would make this known not by small letters on a small ticket but, at least in addition, by means that would make that important fact known almost to the dullest. It was not a case of a special feature: it was a regular ticket sold at the regular fare for passage on the regular service. If the company should object to advertising its terms in the suggested manner, for what reason would that be?

I can think of none other than that such an advertisement would not promote patronage. This would mean that passengers generally did not read the conditions and that there was no reason to provoke discussion on the matter unnecessarily; it would be sufficient when the passenger was injured to invite his attention to the terms of the ticket. Accidents would be relatively few and injuries would not be as objectionable a means of publication as the open notice.

Such a conditioned service could amount to a virtual deception of passengers. That it could be reasonable to place carriage of this nature at the entire risk of the passenger I agree; the special circumstances of a local accommodation in given areas even at that risk could no doubt be of much convenience to residents along the coast. But equally the terms of the accommodation should be openly avowed.

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I do not examine the question whether the undertaking, commenced when the passenger boarded and the ship weighed anchor, continued regardless of the terms on the ticket; I will assume that the passenger, knowing he must buy a ticket, agreed in advance that it should govern the carriage from the beginning.

That in these conditions the company has failed in its duty of constructive notification is supported by what has been laid down in the courts of England and Scotland. In *Henderson et al. (Steam-Packet Company) v. Stevenson* (1), which, as here, was a case of carrier by water, the language of Lord O'Hagan at p. 481, although more exacting, perhaps, than the decision of the House can be said to have been, is peculiarly apposite in indicating the background of general considerations in which the question is to be viewed:—

> When a company desires to impose special and most stringent terms upon its customers, in exoneration of its own liability, there is nothing unreasonable in requiring that those terms shall be distinctly declared and deliberately accepted; and that the acceptance of them shall be unequivocally shewn by the signature of the contractor. So the Legislature have pronounced, as to cases of canals and railways, scarcely distinguishable in substance and principle from that before us; and if the effect of your Lordships' affirmation of the interlocutor of the Lord Ordinary be to compel some precaution of this kind, it will be manifestly advantageous in promoting the harmonious action of the law, and in protecting the ignorant and the unwary.

In *Parker v. The South Eastern Railway Company* (2), the duty of the company is stated by Mellish L.J. in these words:—

> But if what the railway company did is not sufficient to convey to the minds of people in general that the ticket contains conditions, then they have received goods on deposit without obtaining the consent of the persons depositing them to the conditions limiting their liability . . . that if he knew there was writing on the ticket, but did not know or believe that the writing contained conditions, nevertheless he would be bound, if the delivering of the ticket to him in such a manner that he could see there was writing upon it, was, in the opinion of the jury, reasonable notice that the writing contained conditions.

Hood v. Anchor Line (3). In this case a steamship passage ticket was enclosed in an envelope, delivered to the passenger, on the front of which was printed in capital letters a notice requesting the passenger to read the conditions

(1) (1875), L.R. 2 H.L. Sc. 470. (2) (1877), 2 C.P.D. 416 at 423.
(3) [1918] A.C. 837.

of the enclosed contract. The ticket itself, on its face, contained a notice that it was issued subject to conditions thereinafter set out and at the foot was a printed request to the passenger to read the contract carefully. The House of Lords held the steamship company to have taken all reasonable steps to bring to the knowledge of the passenger the existence of the conditions. Viscount Haldane at p. 843 considered the duty of the steamship company to depend upon the accepted standards of conduct according to which

> a reasonable man ought to behave in these circumstances towards the neighbour towards whom he is bound by the necessities of the community to act with forebearance and consideration.

And on p. 844, he defined the duty of the company:—

> My Lords, I agree that the appellant here (the passenger) was entitled to ask that all that was reasonably necessary as a matter of ordinary practice should have been done to bring to his notice the fact that the contract tendered to him when he paid his passage money excluded the right which the general law would give him, unless the contract did exclude it, to full damage if he was injured by the negligence of those who contracted to convey him on their steamer. Whether all that was reasonably necessary to give him his notice was done is, however, a question of fact, in answering which the tribunal must look at all the circumstances and the situation of the parties.

In *Fosbroke-Hobbes v. Airwork Ltd., and British-American Air Services, Ltd.* (1), an aeroplane had been hired for the carriage of the hirer and a party of guests. Just as it was preparing to set off, an envelope containing a "ticket" was handed to the hirer by the pilot. The ticket was a document called a "special charter" which contained, among other things, a number of conditions, one of which exempted the owners from liability for their own or their servants' negligence. The ticket contemplated signature by the passenger and its return when signed to one of the owners' officials. Before the hirer had an opportunity of seeing the contents of the envelope, the aeroplane started on its journey and almost immediately crashed. It was held by Goddard J., now Lord Goddard L.C.J., that the condition exempting the owner from liability was not binding on the hirer.

Many cases have been brought to our attention in which some special character of the service or the passenger was involved such as workmen's tickets, excursion or special fares. In these instances the special feature itself to the

(1) [1937] 1 All E.R. 108.

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ordinary patron would suggest special terms; and this circumstance plus a notice of conditions on the face of the ticket, with or without other acts of notification, can, in general, under the circumstances in which such services are ordinarily engaged, be found to be a compliance with the obligation on the carrier.

For these reasons I am unable to say that the Court of Appeal was wrong in finding that the company had not taken sufficient steps to give notice of the condition to the respondent and the appeal must be dismissed with costs.

The judgment of Locke, Fauteux and Nolan JJ. was delivered by

LOCKE J.:—This is an appeal from a judgment of the Court of Appeal for British Columbia (1) which dismissed an appeal by the present appellant from the judgment for damages awarded by Wilson J. at the trial (2).

The appellant owns and operates a line of steamships carrying passengers and freight along the west coast of British Columbia. During the early morning hours of December 29, 1951, the Catala, of the appellant's line, called at Brem River on Toba Inlet to pick up passengers. The only description of the facilities for the embarkation of passengers is that given by the respondent, who said that it was a "float landing" and that he and his wife and their children and his brother-in-law were picked up in a sling and lowered to the deck. Their luggage had been taken on board prior to this in the same manner.

The respondent and his wife and children were going to Westview, British Columbia, a settlement adjoining Powell River. The appellant did not maintain any place for selling tickets at Brem River and these were purchased by the respondent from the purser shortly after he went aboard. The only account of what took place when the tickets were bought is that of the respondent who said that he went to a wicket at the purser's office and bought tickets for himself and his wife, and for a stateroom, and that without looking at the tickets he put them in his pocket and went to the

(1) 14 W.W.R. 673, [1955] 2 D.L.R. 564.
(2) 13 W.W.R. 72, [1954] 4 D.L.R. 267.

stateroom. He stated that he had no conversation with the purser about the tickets. A steward showed the respondent and his family to their room.

Apparently, the luggage had been placed in one of the holds and, shortly after they had gone to the stateroom, the respondent's wife asked him to get some articles out of their bags and he proceeded, with the steward who had shown them to their stateroom, to get the articles required. En route, in the darkness, he fell into a hatchway which was either unlighted or insufficiently lighted and suffered the injuries which gave rise to the action.

There are concurrent findings that these injuries were sustained due to the negligence of the steward and no question is raised as to this on the appeal, the only matter to be determined being whether, in view of the terms of the ticket purchased by the respondent, he has any enforceable claim.

On the face of the ticket it was stated to be good for the passage from Brem River to Powell River, where passengers for Westview would disembark, when stamped by the company's agent and presented with the coupon attached, and beneath this there appeared in red type the following words:—

> This ticket is issued subject to the conditions of carriage of passengers and baggage endorsed on the back hereof and those posted in the Company's office.

On the reverse side of the ticket there appeared in red type:—

> This ticket is good only for one month from date of issue as stamped on back. It is not transferable, no stop-over will be allowed and the person using it assumes all risk of loss or injury to person or property while on the vessel or while embarking or disembarking, even though such loss or injury is caused by the negligence or default of the shipowner, its servants or agents, or othewise howsoever.
>
> The holder hereof in accepting this ticket thereby agrees to all the conditions stipulated thereon.

Below this there was stamped: "Union Steamships Limited, Dec. 29, 1951, S.S. Catala."

The respondent is a logger by occupation and had been engaged in logging camps on the British Columbia coast for some fifteen years and had frequently travelled on vessels of the appellant company. He had a public school education. Cross-examined, he said that he knew there was some writing on the front part of the ticket but he did not read

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it and he did not look on the back. He was not asked, either in direct or cross-examination, as to whether he knew that there were any conditions affecting his passage endorsed anywhere on the ticket nor, indeed, whether, by reason of having travelled many times on the Union Steamship vessels, he was aware that their tickets were endorsed with any clause limiting their liability for negligence.

The defendants did not call the purser or anyone else who was present when the tickets were sold to the respondent.

The learned trial judge made the following findings:—

> Insofar as the form of the ticket is concerned it seems to me to be such that a reasonable attempt is made to bring to the attention of the passenger the conditions under which he is to be carried. The plaintiff did not in fact read the ticket and was unaware of the conditions endorsed thereon. He was not asked to agree to them, nor were they verbally or by any notice posted at the ticket booth brought to his notice.

Referring then to a passage said to have been taken from the judgment of Anglin J., as he then was, in *Grand Trunk Pacific Coast Steamship Company v. Simpson* (1), as to the burden of proof, he held that "considering the hour and the circumstances, I think he had no reasonable opportunity to read the ticket", and that the defendant had not discharged the burden which rested upon it.

In the Court of Appeal (2), O'Halloran J.A., who adopted the reasons delivered by Sidney Smith J.A., further expressed the opinion that the issuing of the ticket by the carrier and its acceptance by the respondent did not constitute a contract between them, the ticket being in reality no more than a receipt and that, accordingly, the conditions afforded no defence. Sidney Smith J.A., saying that the trial judge had said that the carrier had failed to satisfy him that reasonable means had been adopted to bring the limitative conditions to the attention of the respondent, considered that this finding of fact should not be disturbed. That learned judge did not mention the finding at the trial that the form of the ticket was a reasonable attempt to bring the conditions to the attention of the passenger. Davey J.A., who said that he was in substantial agreement with Sidney Smith J.A., referred to the finding at the trial that a reasonable attempt had been made, as far as the form of the ticket was concerned, to bring the special condi-

(1) 63 S.C.R. 361, [1922] 2 W.W.R. 320.
(2) 14 W.W.R. 673, [1955] 2 D.L.R. 564.

tions to the respondent's notice but that the trial judge had properly treated that finding as indecisive, for the conditions would not bind the respondent "unless he should have known the ticket was a contract or that it contained the special condition".

The ticket which the respondent purchased from the purser does not, as in *Simpson's Case,* contain a long series of printed conditions. There is but the one condition which is the one in question. It is difficult to think of a means whereby the attention of the purchaser of a steamship ticket could be better directed to its terms than by printing in red letters the notice which appeared on the face of the ticket in this matter. The language of the condition is perfectly clear. It is printed in red and the concluding sentence reads:—

> The holder hereof in accepting this ticket thereby agrees to all the conditions stipulated thereon.

The trial judge, while making the finding to which I have referred, was of the opinion, however, that, considering the hour and the circumstances, the respondent had no reasonable opportunity to read the ticket. As to this, it should be said that there is no evidence as to the lighting in the Catala, in front of the purser's office or in the passageway leading to the stateroom or in the stateroom itself. Neither the respondent nor the witnesses called on his behalf gave any evidence on this point and I think it should not be assumed against the appellant that there was not the usual lighting in steamers of this kind on the west coast, or that the respondent could not have readily read the conditions of the ticket had he taken the trouble to do so. The fact that it was early in the morning when the respondent and his family boarded the steamer does not seem to me, with respect, to affect the matter. It would, of course, be dark at this early hour in the morning in December, but I am unable to see how, in the absence of any evidence to indicate that the ship was not properly lighted, this can have any relevance.

In addition to saying that the ticket was issued subject to the conditions endorsed on the back of it, reference is made to "those posted in the company's office", and there

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is again no evidence as to whether any such conditions were so posted or what they were. In the absence of any such evidence, it is to the ticket alone that one must look if, indeed, a contract was made on its terms.

The question to be determined is one that is of general importance, particularly to carriers of passengers by sea who undertake the transport of passengers from places where there are no ticket offices in which tickets are sold, these, of necessity, being purchased aboard ship. In the case of a carrier such as the present appellant, it is a matter of common knowledge on the west coast that their passenger vessels stop at many small places between Alaska and Vancouver where it is not practical to maintain such offices and where there are no docks from which passengers may embark. Persons wishing to travel upon these vessels are well aware that these conditions prevail and that tickets for passage must be purchased on board from the purser.

There is a vast number of reported cases in which the liability of carriers of passengers for reward has been considered, where the tickets sold exempted the carrier from liability for the negligence of its employees. Any difficulty arising in determining the question of liability in a particular case appears to me to arise from the task of reconciling what has been said in some of the leading cases as to the applicable principles of law with statements made in others.

There was at the time in question no law which prevented the appellant company from entering into an agreement with a passenger which would relieve it from liability for injuries caused by the negligence of its employees. It is further to be remembered that the appellant obtained at the trial a finding that there had been on the part of the appellant a reasonable attempt to bring to the attention of the passenger the conditions under which he was to be carried. This finding in itself distinguishes the case from such cases as *Simpson's Case, supra,* where the jury had found that, while the plaintiff knew there was writing or printing on her ticket, the company had failed to do what was reasonably sufficient to give her notice of the conditions which it contained. I do not regard that case as declaring any principle which affects the present matter.

I do not think that what was said by Mellish L.J. in *Parker v. The South Eastern Railway Company* (1), can be taken without qualification to state the true principle to be applied in such cases. That case was in regard to a contract for the storage of luggage in a railway station, and the question considered in the Court of Appeal was whether the trial judge had left the proper questions to the jury. Mellish L.J. said in part (p. 423):—

> I am of opinion, therefore, that the proper direction to leave to the jury in these cases is, that if the person receiving the ticket did not see or know that there was any writing on the ticket, he is not bound by the conditions; that if he knew there was writing, and knew or believed that the writing contained conditions, then he is bound by the conditions; that if he knew there was writing on the ticket, but did not know or believe that the writing contained conditions, nevertheless he would be bound, if the delivering of the ticket to him in such a manner that he could see there was writing upon it, was, in the opinion of the jury, reasonable notice that the writing contained conditions.

As to the first of these three propositions stated in such absolute terms, there is room, in my opinion, for grave doubt. It is unnecessary to consider its accuracy in disposing of the present matter. Mellish L.J., having thus stated the matter, concluded, however, by saying that the real question was whether the railway company did what was reasonably sufficient to give the plaintiff notice of the condition.

The matter is expressed somewhat differently in the judgment of Viscount Haldane L.C. in *Grand Trunk Railway Company of Canada v. Robinson* (2). In that case, the plaintiff who was travelling at half fare on a freight train, in charge of a horse, was carried pursuant to a contract in a form approved by the Board of Railway Commissioners which bore across the fact of it, in large red type, the words "Read this Special Contract". The contract was made on his behalf by the owner of the horse and neither of the parties read its conditions, which provided that the passenger was carried at his own risk. It was not suggested in the case that the carrier made any misrepresentation as to the nature of the contract, or that the owner or the passenger did not have an opportunity to read its terms: they simply did not do so. As to this, the Lord Chancellor said (p. 748):—

(1) (1877), 2 C.P.D. 416. (2) [1915] A.C. 740.

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Moreover, if the person acting on his behalf has himself not taken the trouble to read the terms of the contract proposed by the company in the ticket or pass offered, and yet knew that there was something written or printed on it which might contain conditions, it is not the company that will suffer by the agent's want of care. The agent will, in the absence of something misleading done by his company, be bound, and his principal will be bound through him. To hold otherwise would be to depart from the general principles of necessity recognized in other business transactions, and to render it impracticable for railway companies to make arrangements for travellers and consignors without delay and inconvenience to those who deal with them.

Later, he continued saying:—

The company owes the passenger no duty which the contract is expressed on the face of it to exclude, and if he has approbated that contract by travelling under it he cannot afterwards reprobate it by claiming a right inconsistent with it.

This is to be compared with the third of the propositions stated in the judgment of Mellish L.J. in *Parker's Case, supra.* The difference is material: it is if the person contracting knew that there was something written or printed on it *which might contain conditions,* and not if the writing on the ticket constituted reasonable notice *that the writing contained conditions.*

In *Hood v. Anchor Line* (1), Viscount Haldane reiterated what he had said in *Robinson's Case,* that the question as to whether what was reasonably necessary to be done to draw the passenger's attention to the terms of the contract was, in substance, one of fact. Lord Finlay L.C., referring to *Parker's Case,* said that it showed that (p. 842)

if it is found that the company did what was reasonably sufficient to give notice of conditions printed on the back of a ticket the person taking the ticket would be bound by such conditions.

Lord Parmoor, after saying that the Lord Ordinary had found that the respondent had done what was reasonably sufficient to give the appellant notice of the conditions, said that it was not material that other or different steps might have been taken, and that a clearly-printed notice on the envelope which enclosed the ticket and on the face of the ticket was as effective for this purpose as if the representative of the respondents had, at the time when he issued the ticket, verbally called the attention of the appellant to the conditions and asked him to read them.

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

The result of the decisions appears to me to be accurately summarized by Swift J. in *Nunan v. Southern Railway Company* (1):—

> A number of cases were cited to me to show how the Courts had dealt with the question of fact to be determined in this case in various circumstances. I have examined those cases for the purpose of ascertaining in what way a jury should be directed to approach the consideration of such a question of fact if the matter had been one to be decided by them. I am of opinion that the proper method of considering such a matter is to proceed upon the assumption that where a contract is made by the delivery, by one of the contracting parties to the other, of a document in a common form stating the terms upon which the person delivering it will enter into the proposed contract, such a form constitutes the offer of the party who tenders it, and if the form is accepted without objection by the person to whom it is tendered this person is as a general rule bound by its contents and his act amounts to an acceptance of the offer to him whether he reads the document or otherwise informs himself of its contents or not, and the conditions contained in the document are binding upon him; but that if there be an issue as to whether the document does contain the real intention of both the parties the person relying upon it must show either that the other party knew that there was writing which contained conditions or that the party delivering the form had done what was reasonably sufficient to give the other party notice of the conditions, and that the person delivering the ticket was contracting on the terms of those conditions.

This statement was adopted by the Court of Appeal in *Thompson v. London, Midland and Scottish Railway Company* (2), *per* Lord Hanworth M.R. at p. 47.

I have examined the reasons for judgment delivered at the trial which are contained in the file forwarded to this Court and are reproduced in the printed case at p. 111. There is an inaccuracy in the passage quoted from the reasons of Anglin J. in *Simpson's Case*. As quoted it reads:—

> The burden is on the defendant to show that it has done all that *it could* to bring the limitative conditions to the plaintiff's notice.

The sentence, as it appears in the Reports of this Court at p. 378 of 63 S.C.R. (and in [1922] 2 W.W.R. at p. 331), reads that the burden is

> to show that it has done all that *could reasonably be required* to bring the limitative conditions to the plaintiff's notice.

It is the latter of these statements that is supported by authority, the former is not, and if it were applied as the test it would be error. Whether it was applied does not

(1) [1923] 2 K.B. 703 at 707. (2) [1930] 1 K.B. 41.

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appear to me to be clear since it was followed by a further quotation from the reasons of Anglin J. in which the expression "whether the carrier has done what was reasonably sufficient" appears.

The reasons do not suggest what other efforts the carrier might reasonably have been expected to make to bring the conditions to the passenger's attention. The suggestion that a carrier should be required to give a verbal notice, in addition to the printed notice, was rejected by Lord Finlay L.C. and Lord Parmoor in *Hood's Case*. The respondent admitted that he saw that there was writing on the face of the ticket and I think he must be taken to be thereby affected with knowledge that what was written referred to the contract of carriage and with notice of what would have been disclosed had he read it.

I can find no evidence in the record to support the statement that the respondent had no reasonable opportunity to read the ticket and it is to be noted that Davey J.A. was of the opinion that it could not be supported. In my opinion, the issue in the present matter is determined by the finding of fact that the endorsement on the face of the ticket printed in red ink and referring to the conditions endorsed on its reverse side constituted a reasonable attempt to bring to the passenger's attention the terms of the contract and I consider that his acceptance of the ticket without protest and embarking upon the voyage precludes him from reprobating its terms, relying upon the fact that he did not read it.

I would allow this appeal with costs throughout, if demanded.

CARTWRIGHT J. (*dissenting*):—This is an appeal from a unanimous judgment of the Court of Appeal for British Columbia (1) affirming a judgment of Wilson J. (2) in favour of the respondent for $10,328.50 damages for personal injuries.

In this court no question was raised as to the amount of damages or as to the injuries suffered by the respondent having been caused by the negligence of the appellant's

(1) 14 W.W.R. 673, [1955] 2 D.L.R. 564.
(2) 13 W.W.R. 72, [1954] 4 D.L.R. 267.

servant. The submission of the appellant is that it is relieved from liability by the conditions printed on the ticket purchased by the respondent.

Counsel for the respondent does not attack the form of the ticket, which bore a notice on its face printed plainly in red ink stating that it was issued subject to the conditions on its back, conditions which, in turn, were clearly and legibly printed.

On the uncontradicted evidence the respondent did not read the ticket, he simply put it in his pocket and proceeded to his stateroom. There is no evidence that he had any actual knowledge of the fact that the appellant proposed to make it a condition of the contract of carriage that he must bear all the risk of injury resulting from the negligence of its servants, nor is there any evidence that he knew that the ticket had printed upon it either conditions or the terms of a proposed contract. The respondent stated that there was writing on the front part of the ticket but that he did not look at the writing "so as to read it".

On its facts this case does not fall within the line of cases in which a passenger knows that his ticket has printed upon it the terms of a proposed contract and, with such knowledge, does not bother to read it.

In my opinion the evidence supports the concurrent findings of fact in the courts below that the appellant has failed to satisfy the onus of shewing that reasonable means were adopted to bring the proposed condition relieving it from liability for the negligence of its servants to the attention of the respondent, "in", to use the words of Sidney Smith J.A., "the obvious realities of the situation".

I would dismiss the appeal with costs.

Appeal allowed with costs, if demanded.

Solicitors for the plaintiff, respondent: Jestley, Morrison, Eckardt & Goldie, Vancouver.

Solicitors for the defendant, appellant: Campney, Owen, Murphy & Owen, Vancouver.