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Creation of Carrier-Passenger Relationship

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Creation of Carrier—Passenger Relationship

The duties of a common carrier to a passenger are much greater than those owed to the public in general. Because of this fact, it is often important to determine just when and how the carrier-passenger relationship is created. The relationship is founded on contract, either express or implied in fact.[1] In this contract, there are two essentials: (a) The undertaking of the person to travel as a passenger, and (b) The acceptance by the carrier of that person as a passenger.[2]

The failure to distinguish between the creation of the relationship and the duties and obligations arising in connection with the relationship, has led some courts into the error of holding that the duties of a carrier to a passenger are founded on contract.[3] If the court means an express

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[1]Moore: Carriers, (2d. ed.), volume 2, page 922, states the idea as follows: "The status is a contract relationship which commences when the passenger has put himself at a proper time and place into the care of the carrier with a bona fide intention of being transported, and the carrier has expressly or impliedly received and accepted him as a passenger." See also Dobie: Bailments and Carriers, page 537; Geiger v. Pittsburgh Ry. Co., 247 Pa. 287; Bricker v. Phila., etc. Ry. Co. 132 Pa. 1; Pennsylvania Railroad Co. v. Price, 96 Pa. 256; Blair v. Philadelphia Rapid Transit Co., 36 Pa. Superior Ct. 319.

[2]Hutchinson: Carriers, (3rd. ed.), volume 2, page 997, and cases cited in Note 1. See also Weber v. Chicago, etc., R. R. Co., 151 N. W. 852, L.R.A. 1918A, 626.

[3]See Todd, Admx. v. Louisville & Nashville R. R. Co., 274 Ill. 201, 113 N. E. 95, L. R. A. 1916 F, 543, where the Illinois court seems to infer that the duties spring from the contract creating the relationship.

contract, it is clearly erroneous. However, it is possible that the statement has reference to the so-called "contracts implied in law". If this is their idea, their error lies in the fact that they are adhering to an early theory of quasi-contracts. In fact, the duties of a common carrier toward a passenger are imposed by law irrespective of any promise or agreement.[4] It is not necessary to employ the fiction of a promise. The duties are in the nature of quasi-contractual obligations arising by virtue of the carrier's calling.[5]

As a general rule, the responsibility of a carrier toward a person as a passenger commences upon the acceptance by the carrier.[6] This acceptance may be (a) an express acceptance of the individual by present assent, or (b) an acceptance, in advance, of any one complying with the carrier's offer. Hence, a person desiring transportation

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[4]Delaware, L. & W. R. Co. v. Trautwein, 52 N. J. L. 169, 7 L. R. A. 435; Carroll v. Railroad, 58 N. Y. 126, 17 Am. Rep. 221; Fetter on Carriers of Passengers, section 220. Dean Roscoe Pound, in an article in 25 Harvard Law Review, states the proposition thus: "One who is engaged in a public calling, in addition to the general negative duties resting upon all men, is subject to certain affirmative duties imposed directly by law".

[5]Between the years 1673 and 1705, the courts resorted to the fiction of a promise "implied in law" in order to enforce quasi-contractual obligations, the remedy being an action of general assumpsit. At first, the fictitious promise was a necessary element in the declaration of the plaintiff, but naturally enough, proof was not required, since the whole thing was fiction. Today, the courts no longer resort to the fiction, but frankly state that the obligation is imposed directly by law. In brief, we have: First—The relationship created by a contract, express or implied in fact; Second—When the relationship has been established, the law imposes certain specific duties upon the carrier correlative to certain rights existing in the passenger.

[6]See Note 1; Thus, a person climbing on the rear bumper of a crowded summer street car and riding thereon is not a passenger unless the evidence in the case shows an acceptance of him as such. Coyne v. Pittsburgh Ry. Co., 239 Pa. 17. The language of the Court in Pitcher v. People's St. Ry., 154 Pa. 560 is: "The Company was entitled to some knowledge of his intention to assume the relation of passenger before being charged with the duty of taking care of him as a passenger."

may become a passenger in either of two ways: (a) by securing the express acceptance of himself as a passenger, or (b) by complying exactly with the terms and conditions of the carrier's offer or "holding out".[6*] In either case, the real criterion is acceptance by the carrier. In this connection, it is necessary to distinguish between the case where the plaintiff is suing the carrier as a passenger and the case where he sues as a non-passenger. If a carrier refuses to accept a person as a passenger, that person does not become a passenger. The carrier has merely violated his right *to become a passenger*—not his right *as a* passenger. In such a case, the plaintiff's only remedy is an action for damages for wrongful refusal.[7]

With this preliminary discussion in view, we may examine certain classes of cases in which the existence of the carrier-passenger relation has been brought into question.

Payment of Fare

The fact that a person purchases a ticket does not necessarily mean that he is liable for the payment of fare at any definite time. He may ride on that day, or he may redeem the ticket without riding at all. Hence the mere purchase of a ticket does not make one a passenger.[8] It is true that in some cases, the courts have emphasized the fact that a ticket was purchased. However, this is true because in those cases, the purchase was some evidence of a bona fide intent to become a passenger.

Contrary to a popular belief, neither the possession of a ticket nor the payment of fare are absolute essentials to

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[6*]Powell v. Ph. & Reading Ry., 220 Pa. 638—"The relation of Carrier-Passenger begins as soon as one intending in good faith to become a passenger enters in a lawful manner upon the carrier's premises to engage passage." See Geiger v. Pittsburgh Ry. Co., 234 Pa. 454; Lackawanna & B. R. R. v. Chenowith, 52 Pa. 382 (where plaintiff attached his private car to the train).

[7]Hogner v. Boston Elev. R. Co., 198 Mass. 260, 15 L. R. A. (N.S.), 960, 84 N. E. 464; Illinois Centr. R. R. Co. v. O'Keefe, 168 Ill. 115, 39 L. R. A. 148; 48 N. E. 294; 4 Elliott, Railroads (2d. ed.) section 1581.

[8]Vandegrift v. West Jersey & S. R. R., 71 N. J. L.—, 60 Atl. 184.

the creation of the relationship.[9] Thus, one who rides with the full expectation of paying his way is a passenger. Getting on the carrier's vehicle amounts to an implied tender of fare. The delay of the conductor in collecting does not prevent such person from being a passenger. In other words, a person thus situated is a passenger from the time he enters the vehicle—not from the moment he pays his fare.[10]

Waiting at Station for a Train

The relation may arise before any actual transportation. A person intending to ride, in a vehicle before it starts, is a passenger.[11] A person in a waiting room or on the platform, awaiting the arrival of his train is a passenger.[12] But a person on the public street, intending to "catch" a train, is not a passenger merely because of his intent.[13]

Boarding a Moving Train

When a train starts away from the station or platform from which it has received passengers, it thereby withdraws the implied offer to persons to become passengers.[14]

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[9]"The possession of a ticket is not an absolute essential . . . . . ; it is merely one element to be considered . . . . ", 18 Fed. 221; See also 12 L. R. A. 823, 46 L. R. A. (N.S.) 142, McGill v. Rowland, 3 Pa. 451; Ham v. Del., etc., Canal Co., 142 Pa., 617; Pennsylvania Railroad Co. v. Price, 96 Pa. 256. These authorities do hold, however, that non-payment of fare is a good cause for rescission of the contract of passage.

[10]Mellquist v. The Wasco, 53 Fed. 546.

[11]Hebrik v. Carr, 29 Fed. 298.

[12]See Norfolk & W. R. R. v. Galliher, 89 Va. 639, 16 S. E. 935; Coswell v. Boston & W. R. R., 98 Mass. 194. However, one at station, after abandonment of intention, or merely out of curiosity, or for some purpose foreign to transportation, is not a passenger. See Gillin v. P. R. R., 59 Pa. 129; Ambler v. Phila. Ry. Co., 39 Pa. Superior Ct. 198.

[13]Railway v. Smith, 86 Fed. 292: "He (the plaintiff) did nothing to notify any officer or agent of defendant company that he was even a prospective passenger."

[14]Tompkins v. Port. R. L. & P. Co., 77 Or. 174, 150 Pac. 758; Chaffee v. Old Colony Ry. Co., 17 R. I. 658, 24 Atl. 141.

Any one attempting to board the train while moving is not a passenger.[15] However, it often happens that a person is successful in getting on the train. Then the question arises as to when that person becomes entitled to the protection of a passenger. The Massachusetts view is that he becomes a passenger when he has passed the danger and has placed himself in the proper place for the carriage of passengers—the seat.[16] Pennsylvania, on the other hand, holds that he becomes a passenger as soon as he reaches the platform in safety. In *Sharrer v. Paxson, 171 Pa. 26,* plaintiff had attempted to get on a moving train and had reached the platform, when the carrier's servant pushed him off. It was held that plaintiff was a passenger and entitled to the same protection accorded to any other passenger. In *Pennsylvania Railroad Co. v. Reed, 60 Fed. 694,* a servant of the carrier, while aiding plaintiff to board a moving train, acted negligently so as to injure plaintiff. The carrier was held liable for the injury.

Boarding Trolley or Omnibus

The early view was that the relationship began when a person with intent of riding put his foot on the step or his hand on the rail of the vehicle.[17] However, this view has not been followed so closely within recent years. When a car stops and its doors are opened, that amounts to an implied consent to take persons as passengers. The same is true where a carrier stops in response to a signal by the person wishing to ride. Some cases hold that a person intending to board a bus or trolley becomes a passenger

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[15]Merrill v. Eastern Railroad, 139 Mass. 238, 1 N. E. 548; Boulfrois v. United Traction Co., 210 Pa. 263; Sharer v. Paxson, 171 Pa. 26.

[16]See Merrill v. Eastern Railroad, 139 Mass. 238, 1 N. E. 548.

[17]The leading case is Brien v. Bennett, 8 C. & P. (Eng.) 724. The English decision was followed in Central Ry. v. Smith, 74 Md. 216, 21 Atl. 206; Gordon v. West End St. Ry., 175 Mass. 181, 55 N. E. 990; Davey v. Greenfield & T. F. St. Ry., 177 Mass. 106, 58 N. E. 172; Smith v. St. Paul City Ry., 32 Minn. 1, 18 N. W. 827, and many other cases.

the minute the vehicle slackens its speed in response to a signal.[18] Other courts say that the relation does not arise until he actually reaches the vehicle.[19]

Stealing a Ride

One who enters a vehicle without the knowledge or consent of the carrier, and with the intent to ride to his destination free of charge, is not entitled to the protection given to a passenger. He is a trespasser and rides at his own risk.[20] The same rule applies to a person who, when his fare is demanded, refuses to pay and remains on the vehicle by force or threats.[21] Also, any fraud or deceit on the part of the person riding prevents him from becoming entitled to the position of a passenger.[22] However, if the person has boarded the vehicle under a bona fide mistake, the carrier cannot treat him as a trespasser. Thus, where plaintiff entered a train and sought transportation on a limited ticket one hour after the time limit, the court held that the carrier had overstepped its authority when it ejected him as a trespasser.[23]

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[18]Chicago St. Ry. v. Williams, 140 Ill. 275, 29 N. E. 672; Finkeldy v. Omnibus Cable Co., 114 Cal. 28, 45 Pac. 996.

[19]Duchenim v. Boston Elec. Ry., 186 Mass. 353, 71 N. E. 780.

[20]See 2 L. R. A. 167. This necessarily follows from the fact that the knowledge or consent of the carrier is an essential to the establishment of the relationship. See 25 L. R. A. 700.

[21]Toledo, etc. & W. RR. v. Beggs, 85 Ill. 80.

[22]See 28 L. R. A. 749. The Court, in Condran v. Chicago, M. & St. Passenger Ry. Co., 67 Fed. 522, sums up the matter: "One riding on a train by fraud, stealth, without the payment of fare, takes upon himself all the risks of the ride, and if injured by an accident happening to the train, not due wanton recklessness or wilfullness of the company, he cannot recover." For other examples, see Fitzmaurice v. N. Y., N. H., & H. R. Co., 192 Mass. 159, 6 L. R. A. (N. S.) 1147; and Harman v. Jensen, 176 Fed. 521.

[23]Arnold v. Pennsylvania Railroad, 115 Pa. 135. The court states that the plaintiff is not conclusively presumed to be a trespasser, but should be given an opportunity to show that his act was the result of an innocent mistake. In this case, plaintiff, after being told by the conductor of his mistake, offered to pay his fare, under protest. The conductor refused this offer and ejected the plaintiff at the first stop.

Riding as Employee of Carrier

An employee riding as a part of his work is not a passenger.[24] But if he rides to and from his work, or if his wages are reduced proportionately because he rides, then he is given the same protection accorded to any other passenger.[25]

Riding as Employee of Company Other Than Carrier

In the absence of any statute, such persons are not usually considered as passengers. Pennsylvania courts have held that postal clerks,[26] servants of sleeping car companies,[27] and news agents are not passengers.[28] Insofar as suits for injuries or wrongful death are concerned, the matter is regulated in Pennsylvania by statute. The Act of April 4, 1868, P.L. 58 provides that when any person shall sustain personal injuries or loss of life while lawfully engaged or employed on or about the roads, works, depots, and premises of a railroad company, or in or about any train or car therein or thereon, of which company such person is not an employee, the right of action and recovery in all such cases against the company shall be only as would exist if such person were an employee.[29]

Riding in Place not Intended for Passengers

A person riding in a place not intended for passengers does not thereby accept the carrier's invitation. For in-

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[24]Ryan v. Cumberland Valley Ry. Co., 23 Pa. 348; St. Bernard Cypress Co. v. Johnson, 222 Fed. 246, 9 L. R. A. (N. S.) 873.

[25]O'Donnell v. Allegheny Valley Ry. Co., 59 Pa. 239; Creed v. Pennsylvania Railroad Co., 86 Pa. 139; McNulty v. Pennsylvania Railroad, 182 Pa. 479.

[26]Martin v. Pennsylvania Railroad, 195 Pa. 499; Pennsylvania Railroad v. Price, 96 Pa. 256 (see 113 U. S. 218). The weight of authority on this point is contra to the Pennsylvania holding; See 10 Corpus Juris 1053 and cases cited therein.

[27]Murray v. Philadelphia, etc. Ry. Co., 249 Pa. 126; Coleman v. Pennsylvania Railroad, 242 Pa. 304; but see Lewis v. Pennsylvania Railroad, 220 Pa. 317.

[28]Smallwood v. Balt. & Ohio Ry. Co., 215 Pa. 540.

[29]See Miller v. Northern Central Ry. Co., 216 Pa. 105.

stance, one riding on the engine cab, in a mail car, or a baggage car, is not a passenger.[30] Nor does a person become a passenger by riding on a freight train.[31] In this class of cases, the fact that the employees of the carrier have knowledge that the person is riding in an unsuitable place does not make that person a passenger.[32] However, if the carrier has permitted persons to ride in such places, or if the person can show a custom, then the carrier will be held to the same responsibility as it owes to a passenger in the customary places.[33] In *O'Donnell v. Allegheny Railroad Company, 59 Pa. 239,* the lower court charged the jury to the effect that the baggage car was an improper place for a passenger, if there without the consent or knowledge of the carrier, and to be there was sufficient to establish contributory negligence. The Supreme Court held this charge erroneous because there was evidence in the case showing a custom of the railroad to permit plaintiff to ride in the baggage car for a period of over two months.

In connection with this subject, it is well to note a distinction between (a) persons already passengers who go into a place not provided for them, and (b) persons intending to become passengers who go into the wrong place. In the former, the person does not thereby lose his character as a passenger. The only effect may be to render him guilty of contributory negligence so as to prevent his recovery for any injury sustained.[34] In the latter case, the person never becomes a passenger.[35] Of course, if the person is riding in an unsuitable place by the direction of

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[30]Riding on engine cab—Waterbury v. N. Y., etc. Railroad, 17 Fed. 671. Riding in baggage car—Buzby v. Philadelphia Traction Co., 126 Pa. 559. Riding in mail car—Bricker v. Phila., etc. Ry. Co., 132 Pa. 1.

[31]But see Creed v. Pennsylvania Railroad, 86 Pa. 139, where the carrier had permitted persons to ride on freight train as passengers.

[32]See cases cited in Note 30.

[33]O'Donnell v. Allegheny Valley Railroad Company, 59 Pa. 239; Creed v. Pennsylvania Railroad, 86 Pa. 139; Reber v. Bond, 38 Fed. 822.

[34]Bard v. Philadelphia Traction Co., 176 Pa. 97.

[35]Bricker v. Phila., etc. Ry. Co. 132 Pa. 1.

the employee of the carrier, he is a passenger. In *Mittleman v. Philadelphia Transit Company, 221 Pa. 485,* plaintiff was riding on the platform of a crowded car by the express direction of the conductor. The court held that he was a passenger.

Children Riding Free

Most railroads permit children under a certain age to ride at half fare, and some to ride free of charge. These are passengers and entitled to the same protection and care as those who have paid full fare. If a child accepts the invitation of an employee of the carrier to ride free, he becomes a passenger.[36] Upon principle, however, it is difficult to justify the decisions so holding. Of course, if the employee had the authority to give free rides, then the cases would seem sound. But no one would contend that an employee of a common carrier acts within the scope of his actual or apparent authority when he invites people to ride without paying.

Miscellaneous Cases

It is impossible to consider all of the various situations that arise in connection with this question. However, there are a few other cases worth considering. Thus, one who rides on a "drover's pass" is a passenger.[37] As implied in the section of this article on "Payment of Fare", a person riding gratuitously, or upon a pass, is accorded the same protection as that given any other passenger.[38] Most of the cases hold that a person riding as the guest of an em-

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[36]See Chicago Ry. v. Caseby, 9 Ill. App. 632; Danbeck v. New Jersey Traction Co., 5 N. J. L. 463; Hestonville Passenger Ry. Co. v. Grey, 1 Walker (Pa.) 523.

[37]See Rowdin v. Pennsylvania Railroad, 208 Pa. 263. A "drover's pass" is a pass whereby the shipper of livestock is transported in accordance with the contract of shipment, or by arrangement with the company, over the lines of a railroad, for the purpose of feeding, watering, or otherwise caring for the livestock which he accompanies. See Grand Trunk R. R. Co. v. Stevens, 95 U. S. 665.

[38]See 25 L. R. A. 491, and cases cited on "Payment of Fare".

ployee is not a passenger, basing their decision on the rather logical argument that whatever relationship exists, is between the employee and the person.[39]

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[39]See Waterbury v. New York, etc. R. R., 17 Fed. 671; Condran v. Chicago, etc. Ry., 67 Fed. 522; Janny v. Great Northern Ry., 65 N. W. 458. But see Wilkes v. B. R. & P. Ry. Co., 216 Pa. 355, where a person riding on the engine with the permission of carrier's employee was held to be a passenger.

For further information on this subject, in general, see 10 Corpus Juris, Sections 1037-1046 and 1053-1062; 4 Ruling Case Law, Sections 470-486 and 489-498; 19 Harvard Law Review 250.