

ember 2d, and Monday, December 4th. The testimony tends to show that the difference was about 50 cents per 100 pounds; and he claims that he had 182 head of cattle, of about 1,400 pounds each. He would also be entitled to interest at the rate of 6 per cent. per annum to the date of bringing this suit, August 20th last.

The defendant has asked some special instructions, which I will give, although I have probably covered the ground already.

"If the jury find that J. J. Squier, at the time he sent the message to the plaintiff which is in controversy in this action, knew that the plaintiff, to whom it was addressed, lived three or four miles outside of Melvern, and beyond the free-delivery limits of said office, and made no deposit to pay for delivery of the same beyond said free-delivery limits, and did not guaranty the payment of, or make provision for, such extra service, the company was not bound to deliver said message beyond its free-delivery limits at Melvern, and its failure to do so did not render it liable to the plaintiff in this action."

To which I add this: Unless you should find that the operator at Melvern had waived this requirement, and undertaken to deliver the message as before stated.

"The defendant company was only required to exercise ordinary care and diligence in the delivery of the message from Squier to plaintiff, and if the jury find from the evidence that by reason of the distance which the plaintiff resided from Melvern, the hour at which the message was received, and the duties which the operator at Melvern had to perform, both by reason of his connection with defendant and the Atchison, Topeka & Santa Fé Railroad Company, he exercised ordinary care and diligence in the delivery of said message, then and in that event the company is not liable in this action, and your verdict should be in its favor."

Verdict for plaintiff, \$721.14.

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#### BUSSMAN v. WESTERN TRANSIT CO.

(District Court, N. D. New York. January 27, 1896.)

##### CARRIERS OF PASSENGERS—CONNECTING LINES.

A carrier contracting for passage over its own and a connecting line, having agreed to reserve a stateroom on such connecting line, is liable in compensatory damages to the purchaser of a through ticket who was unable to secure his stateroom by reason of the fact that more tickets were sold than there were staterooms reserved.

##### In Admiralty.

This was a libel in personam by Frances Bussman, wife of Paul F. Bussman, against the Western Transit Company. The facts out of which this controversy arose will be found stated in *Bussman v. Western Transit Co.*, 9 Misc. Rep. 410, 29 N. Y. Supp. 1066, which was an action by the husband of the libelant based upon the same transaction now involved. Very little need be added to the graphic and entertaining narrative of the learned judge who delivered the opinion of the court. The opinion of superior court of Buffalo containing such statement of facts was as follows (Titus, C. J.):

After the evidence for both plaintiff and defendant had all been given, the court, on motion of the defendant, nonsuited the plaintiff, and gave judgment against him for costs, on the ground, as stated in the motion, of a failure to make out a case, and that no damages had been proved. The defendant

is a transportation company, and during the summer of 1893 was engaged in carrying passengers to different lake ports, and to the World's Fair at Chicago. In its pamphlets and circulars, the defendant advertised to take passengers to Chicago for \$19,—special tourist rates. It is stated that these rates include meals and berths in stateroom, and for further information the would-be tourist is directed to apply to the agent of the company, or to Daniel H. Wilcox, general passenger agent, at Buffalo, N. Y. It is further stated: "To those intending to visit the World's Fair, the special attractions of this beautiful lake trip to Chicago are presented. We make close connections at the Sault Ste. Marie, at the head of Lake Huron, with a fine fleet of steamers of the Lake Michigan and Lake Superior Transportation Company. A cool, delightful, and healthful trip on the great inland seas. No dust. Airy and comfortable staterooms." These attractive circulars are made more or less so by a flourish of conspicuous type, which readily catches the eye and attracts the attention of the traveler caring to escape the discomforts of a trip to Chicago in the dust and heat of the summer months. The plaintiff, a practicing physician, having about the 1st of August made up his mind to suspend temporarily the practice of his profession, and to visit the great World's Fair at Chicago, went to the numerous ticket offices on Exchange street, and procured pamphlets of the different transportation companies, among them the circular and pamphlets issued by the defendant, at its office in this city, and from which we have quoted. After reading the circular and sufficiently reflecting on the matter, on the 16th of August he called at the office of the agent of the defendant, Mr. Wilcox, and found Mr. Doty, representing the company, whom he informed that he had "fully considered the matter of going to Chicago, and had concluded to take the defendant's line in preference to the railroad, because he wanted a comfortable trip. He could not sleep on a car, and by taking the defendant's line he could get rest and recreation at the same time, and arrive in Chicago in good condition." Mr. Doty, the agent, after the matter had been fully explained to him by the doctor, said he thought the idea was a good one, and the doctor was so well satisfied with the plan of his trip that, after considering it another night, he went the following day and told Doty "he had made up his mind positively to go to Chicago;" and after some further talk with Doty, in which the doctor was informed that two ladies had engaged the stateroom he wanted, but the accommodating agent would put them in another and less desirable room, and assign that room to the doctor, and after the doctor's chivalric protest that "he did not like to drive these ladies out of their room" he concluded to take the room, and bought two tickets, for which he paid \$38. The doctor, with his wife, presumably had a pleasant trip, as we hear of no complaint from him until the following Tuesday morning, between 6 and 7 o'clock, when the Empire State landed at the "Soo." He says he made inquiry of the purser or captain where the boat which was to take them to Chicago was, and, the City of Duluth being pointed out to him, he got aboard of her, and went to the ticket office, and "found it closed." "There were two ladies there that came down from Buffalo on the Empire State, going to the World's Fair." Whether these were the same two ladies whose stateroom the doctor got from the agent in Buffalo does not appear. He says he then went back, and got his breakfast, and again went to the ticket office of the City of Duluth, and found the agent arranging for rooms with a gentleman and the two ladies, who were told by the agent that it would be impossible to accommodate them with rooms, and from that the plaintiff inferred that he could not get a room. However, he handed his ticket to the agent, who looked at the doctor, and smiled, and said: "I will see what I can do for you." Then the doctor walked away, probably in the full belief, induced by that smile of the ticket agent, that he would be satisfactorily provided with a room. After some time spent in seeing the town, he got on board, and started for Chicago. About noon, according to the doctor's story, he went down to the purser, when the following conversation took place: "Says I, 'Well, how about a room for me on the boat?' 'Well,' he says, 'I cannot give you any; you haven't got any' [of which fact the doctor was undoubtedly fully aware]. 'That's a nice note,' says I. 'I paid for a first-class fare, and I believed

that I was going to have a stateroom, and I paid for one, and I want it.' 'Well,' he says, 'I cannot give you any. I cannot turn a person out of a room and put you in.' Says I, 'That isn't my lookout; that is your lookout.' We talked a little while together, and says I, 'When I get back to Buffalo, I am going to the Western Transit Company, and raise hell,'—which he, on his arrival in Buffalo, proceeded to do. I have quoted thus largely from the plaintiff's testimony to show his understanding and interpretation of the contract which he had entered into with the defendant, and of his persistent intention of enforcing it, even at the risk of serious consequences to all concerned. About 11 o'clock, when all had become weary of looking at the stars and of hearing the swash of the water against the sides of the sturdy vessel, the doctor descended into the cabin, and saw the servants carrying mattresses, and passengers selecting cots, when he met the purser, "and asked him, says I, 'Can't I have one of those mattresses, and put it in the gangway there?' He says [I quote from the testimony], 'Yes, you can do that, if you want your head smashed in.' Says I, 'I will look out for my head all right.'" He says he took the mattress, and placed it in the gangway between the main saloon and the deck. He says he preferred this busy, breezy place to lying with the crowds in the saloon. Evidently the doctor's wife was not of the same opinion, or fascinated with the idea of a night's rest in the gangway, where she was liable to have her head "smashed in"; for, after about half an hour, she left him, saying she preferred sitting in a chair to lying on the floor. The doctor's efforts to get rest do not appear to have been very successful, for he tells us he did not get any rest or sleep that night, and fared no better the next. On his return to Buffalo, he called on Mr. Doty, with the evident intent of making good his promise to the agent at the "Soo," and told him how he fared. Mr. Doty was very sorry that such a thing should happen to the doctor, and he would tell Mr. Wilcox all about it, and, as he was going up to the "Soo," he would have a chance to talk it over with the other company, and see what he could do for him. With this fair, but somewhat equivocal, promise, the plaintiff went away, apparently satisfied. But as time sped on, and he heard no more from Doty or Wilcox, or the agent at the "Soo," he again called on Doty, and learned that Wilcox had returned; and, after going to the office of the company on Main street and on the Reed dock several times, in search of Wilcox, and not finding him, he at last located the missing agent at the office of the company on Main street, and after a long argument by the doctor that something should be done, and the frequently repeated replies of Wilcox that nothing could be done, for him, the plaintiff then called on the general manager, Mr. Caldwell, and requested an interview with that gentleman. The clerk having Mr. Caldwell in charge insisted on the plaintiff's sending in his card, but, as the plaintiff had no cards, he was obliged to wait until the "admitted by card gentlemen" had finished their business, when he was politely informed by the clerk that Mr. Caldwell would like to have him put his complaint in writing, and he would then consider it. The plaintiff replied that he would be glad to do so, and, with that object in view, at once procured a summons and complaint to be served on Mr. Caldwell.

None of the facts sworn to by the plaintiff are denied by the defendant, but it is claimed, and that is also undisputed, that the boat which the plaintiff took at the "Soo" belonged to another line. It is not disputed that the agent Doty telegraphed to the Lake Michigan Transportation Company's agent to reserve berths for the Buffalo passengers, including the plaintiff, and that the agent sent him a reply, in which he agreed to reserve 19 double rooms for the Buffalo passengers, which was a sufficient number to accommodate all of the defendant's passengers on the Empire State going to Chicago. It is claimed that the Lake Michigan Transportation Company failed to carry out its part of the contract, and hence it is claimed that the defendant is not liable for such failure by the Lake Michigan Transportation Company to carry out the terms of the contract on its end of the route. We are referred to no authority by counsel for the defendant sustaining the position taken by him, but it is argued that the Lake Michigan & Lake Superior Transportation Company being a separate corporation, having boats

of its own, not under the control of the defendant, which fact was known to the plaintiff, it was only obliged to furnish him transportation to the "Soo," and after that all responsibility for transportation to Chicago ceased. This theory must depend very much on what the contract which the defendant entered into with the plaintiff was. The circulars assure the public that for the sum of \$19 they will furnish transportation, with stateroom, berth, and meals, to Chicago. This was evidently the understanding of the plaintiff, gathered from its circular and the agent. It was competent for the defendant to make an agreement to take passengers to Chicago partly over its own line and partly over the line of another company. *Quinby v. Vanderbilt*, 17 N. Y. 306; *Swift v. Steamship Co.*, 106 N. Y. 206, 12 N. E. 583. And that it did undertake to do it in this case there is sufficient evidence to warrant the jury in finding. It sold tickets over another line, connecting with its own line, and assumed to secure berths for its Chicago passengers over that line. If such was its contract, and its corresponding line failed to furnish proper accommodation for passengers coming on defendant's boats, we think the defendant would be liable for such a failure, notwithstanding the defendant has a printed notice on the ticket that it acts as agent, and is not responsible beyond its own line, in selling tickets over the Lake Michigan Transportation Company's line.

"It is not claimed by the defendant," quoting from counsel's brief, "that the mere acceptance by the appellant of tickets on which a notice is printed to the effect that the respondent, in selling the tickets, acts as agent, and is not responsible beyond its own line, relieved the respondent from liability for any act of the connecting line; \* \* \* but it is claimed from all the testimony in the case that it may be fairly inferred that the appellant, when he purchased the tickets, had notice of the fact that the respondent's boats only went as far as the 'Soo,' and that there was an implied assent to the limitation of the respondent's liability as set forth in the notice printed on the ticket." We do not think that such was the necessary understanding of the contract. The conduct of the plaintiff from first to last rebuts any such assent, and such is not the only inference to be drawn from the evidence. The plaintiff bought a ticket to Chicago over the defendant's line, and such other lines as it had the right, by previous arrangement, to ticket over; and the printed circular, which was a part of the contract, expressly guaranteed berths to the end of the journey. The notice printed on the ticket is not a contract which binds the passenger. The ticket is a mere voucher or token that the party holding it has paid his fare. *Nevins v. Steamboat Co.*, 4 Bosw. 225; *Quinby v. Vanderbilt*, supra. If it was the understanding of the parties that the plaintiff was being ticketed through to Chicago, then the defendant would be liable to the plaintiff for such damage as he can show he sustained. *Swift v. Steamship Co.*, supra. We think, therefore, that the case should have been submitted to the jury upon the question whether the contract which was entered into in Buffalo, at the time of the purchase of the tickets by the plaintiff, was one to carry the plaintiff through to Chicago and furnish him with a berth in a stateroom.

As to the other point raised by the defendant, that no damages were shown, we think, if a contract is shown to have been made to take the appellant through to Chicago and furnish him with a berth, and that there was a failure by the defendant or the corresponding line to carry out its part of the agreement, then the plaintiff was entitled to some damage, and the amount which he should recover was for the jury to determine. The judgment of the municipal court must therefore be reversed, with costs. All concur.

John W. Ingram, for libellant.

Josiah Cook, for respondent.

COXE, District Judge. The real contract between these parties is plainly deducible from the testimony. There is little dispute as to its terms. It was made by the libellant's husband on the one side and Frederick V. Doty representing the respondent on the other.

The only question in issue is whether the respondent was bound to furnish the libelant with a stateroom from the Sault Ste. Marie to Chicago, which part of the journey was undertaken on a steamer belonging to another corporation.

As the respondent advertised that a first-class rate to Chicago included meals and a stateroom berth, it is argued that there was, at least, an implied agreement to furnish a berth for the entire distance. It is not necessary to determine this naked question for the reason that on the proof the obligation to furnish a stateroom is not left to inference, but is established by testimony which is clear and uncontradicted. Mr. Doty testifies:

"I told him [libelant's husband] that if he was going on that trip he had better give me his name as soon as possible that I might reserve a stateroom for himself and wife. \* \* \* I told him we would have to know so far ahead whether he would go that I might telegraph to the agent of the connecting line at the 'Soo' for a reservation for him on that line; that I was going to send a telegram that day for a reservation for a number of staterooms, and if he decided to go I would include him in the telegram and ask for a reservation for him. I told him I would ask for accommodations on the Chicago boat for himself and wife. \* \* \* If he decided to go, I would include his name amongst the number I was to telegraph for, and reserve accommodations for him on the Chicago boat. \* \* \* He said he was not positive that he would go, but if I would telegraph that line and he would be able to secure accommodations from the 'Soo' to Chicago that he thought he would go; \* \* \* the probabilities were he would surely go if I got accommodations. So under these circumstances I sent the telegram. \* \* \* I explained to him that our steamer \* \* \* only went as far as the 'Soo' towards Chicago and we connected with the Chicago boat there, \* \* \* and he would go right on board there, and make himself known to the purser, who would assign him his accommodations on that boat."

The telegram was sent and an answer was received reserving 19 double staterooms, the number for which application was made. The contents of this telegram was made known to the libelant's husband and thereafter he purchased two first-class tickets. Just prior to sailing from Buffalo he again saw the respondent's agent, and asked if everything was all right, and received an affirmative reply. If, then, the agreement rested solely on respondent's testimony, is it not clear that here was a distinct representation that the libelant was to be furnished with a stateroom to Chicago? It was not an agreement to reserve a number of rooms generally, but a specific, distinct reservation for the libelant and her husband so that the latter had only to give his name to the purser of the connecting boat in order to get the room which had been previously assigned to him. It was relying upon such assurances that the money for two passages to Chicago was paid to the respondent. Having taken the libelant's money it was clearly the respondent's duty to telegraph or write the name of the libelant's husband to the purser of the connecting boat so that the room she had bought and paid for might be assigned her. Instead of doing this the agent simply engaged 19 staterooms, without indicating in any manner whom they were for, and subsequently sold tickets to a number of passengers sufficient to fill five additional rooms. So that the respondent, having secured accommodations for 38 passengers, sold

tickets to 48, leaving the weak and the timid to struggle for preference with the strong and the selfish. In legal effect it was as if the agent had resold the room which he had previously sold to the libelant. One of the 19 rooms engaged by telegram was hers; the agent had promised to reserve it for her. Not only did he fail to do so, but by his own affirmative act he made the securing of a stateroom impossible for some and doubtful for all. If after the conversation in Buffalo he had failed to telegraph at all, it will hardly be doubted that the libelant would have just cause of complaint, but this would have been no more disastrous to the libelant than the course he did pursue. It seems plain that the entire difficulty arose through the carelessness of the respondent's agent at Buffalo. No one else is shown to be at fault. The law should offer a remedy for every wrong. To say that the libelant has no redress for the treatment she received is to confess the utter inadequacy of the law. For 42 hours she was without sleep and deprived of the ordinary conveniences of life and, of course, suffered great annoyance and discomfort.

It is difficult to estimate the damages in these cases where no permanent disability or sickness results, but it is thought that for the discomforts to which she was subjected the sum of \$75 is but a just and reasonable compensation. Decree for \$75 and costs.

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#### ANTHONY v. HITCHCOCK.

(Circuit Court, W. D. Michigan. January 4, 1896.)

##### CONTRACTS—RESTRAINT OF TRADE—GENERAL RESTRICTION.

Plaintiff's declaration alleged that he was engaged in conducting a coal and fish business at a dock on a navigable river, and was the owner of adjoining land, with riparian rights, suitable for carrying on a similar business; that he sold such land and riparian rights to defendant, and defendant, in consideration of such sale, agreed not to buy or sell coal or traffic in the buying or selling of fish, and not to do anything that would conflict with the coal or fish business of plaintiff; yet that defendant, since the execution of such agreement, had leased the premises purchased from plaintiff to a firm of coal merchants, for the purpose of carrying on a coal and fish business, in competition with that of plaintiff, to his damage. *Held*, that it could not be adjudged that the contract, as alleged, was contrary to public policy, as being in restraint of trade, and that, upon such declaration, it appeared that the plaintiff had a good cause of action.

##### On Demurrer to Plaintiff's Declaration.

The declaration in this cause was in assumpsit, and, in substance, alleged: That heretofore, to wit, on the 24th day of February, A. D. 1892, at the village of Detour, in the county of Chippewa and state of Michigan, said plaintiff was engaged in the business and occupation of keeping and operating a certain dock in said village, leased by him from one George Dawson for a term of years ending December 1, 1898, at an annual rental, situated on the shore of St. Mary's river, for the purpose of storing and handling coal, and selling the same to steamboats, tugs, and vessels using and passing through said river, and to purchasers generally, and for the purpose of carrying on the business of handling, buying, and selling fish, and at said dock had an established fish business, of great value to him, to wit, \$20,000 per annum; and that said plaintiff was also the owner of certain pieces or parcels of land