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Carriers--Failure to Furnish Seats--Damages (Davis v. New York Central R. R., 163 Misc. 710 (1937))

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then, many cases have been decided involving joint debtors, principals, and sureties and it has been consistently held that payments made by one, without authorization from the others, did not affect the liability of the others.[18] If an agency between debtors primarily liable for a debt does not exist, there is no authority or reason for holding that such a relationship exists between a maker of a note who is primarily liable and the guarantor who is only secondarily liable.

G. A. R.

CARRIERS—FAILURE TO FURNISH SEATS—DAMAGES.—Plaintiff purchased a ticket from the defendant for transportation from Albany to New York City. When the plaintiff arrived on the station platform, an announcement was made that cars would be added to the train in order to accommodate, more comfortably, the attendant crowd of passengers. Additional cars were annexed, but the seating capacity was still inadequate to supply the needs of the passengers and the plaintiff was one of the many who were forced to stand. Under protest, and after being threatened with ejection, plaintiff surrendered his ticket. As a result of the discomfort suffered, plaintiff's health was temporarily impaired and he sues to recover damages thus sustained. On appeal from a dismissal of the complaint by the Municipal Court, *held,* reversed. There is a duty upon common carriers to furnish passengers with reasonable and adequate accommodations. *Davis* v. *New York Central R. R.,* 163 Misc. 710, 298 N. Y. Supp. 44 (1937).

The duty of a common carrier to furnish "reasonable and adequate accommodations" is imposed by Sections 61 and 62 of the Railroad Law,[1] in connection with Section 26 of the Public Service Law.[2] These statutes simply affirm the common law principles and "enforce a duty springing from their relations as carrier of passengers, and their undertaking with each passenger to transport him safely

[18] Harper v. Fairley, 53 N. Y. 442 (1873); Ulster County Savings Inst. v. Deyo, 191 N. Y. 505, 84 N. E. 1112 (1908); Hoover v. Hubbard, 202 N. Y. 289, 95 N. E. 702 (1911); State Bank of Binghampton v. Mangan, 269 N. Y. 598, 199 N. E. 689 (1935).

[1] RAILROAD LAW (1910) c. 481, § 61, which states the rule that a passenger may be ejected for refusing to pay the fare. RAILROAD LAW (1910) c. 481, § 62, the railroad corporation shall be liable for sleeping, drawing room and parlor cars, it contracts to carry, in the same way it is for ordinary cars, and it shall furnish sufficient ordinary cars for the reasonable accommodation of the traveling public.

[2] PUB. SERV. COMM. LAW (1910) c. 480, § 26, this is the statute which puts the onus of furnishing facilities, safe and adequate, and service, in all respects just and reasonable, on the carrier.

and properly over the road." [3] The courts have decided many cases involving the aforementioned proposition, but other issues were also present.[4] In the instant case, however, the court for the first time was presented solely with the question of liability for seating accommodations.

The New York courts have merely required the common carriers to use reasonable care in supplying seating capacity for those whom it may duly anticipate will use its service.[5] What will be reasonable care, under one set of circumstances and not so under another, is usually a question of fact for the jury. Other jurisdictions hold that the care required is that degree of prudence which would be used by a very cautious and competent person under similar circumstances.[6] As early as 1866, the court in the case of *Willis* v. *Long Island R. R.*[7] recognized that such proper accommodations as is the duty of the common carrier to provide, means a seat for each passenger and not standing room in the passageway.

A passenger does not waive his rights to damages as a result of discomfort, by staying on the train until it reaches its destination, where he is given no notice, express or implied, of the carrier's inability to adequately transport him.[8] And conversely, if he is forewarned of the insufficient transport arrangements, no damages will lie.

M. S. M.

COMMON CARRIERS—BILL OF LADING AS PRIMA FACIE EVIDENCE OF RECEIPT OF GOODS IN GOOD CONDITION—MEASURE OF DAMAGES.—Plaintiff instituted an action against a common carrier of goods in interstate commerce for damage to two carloads of grapes in transit. The grapes were packed in standard containers with open tops, so as to permit ventilation and inspection. The injury com-

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[3] Willis v. Long Island R. R., 34 N. Y. 670 (1866).

[4] Willis v. Long Island R. R., 34 N. Y. 670 (1866); Thorpe v. N. Y. Central R. R., 76 N. Y. 402 (1879); City & Newtown R. R., 87 N. Y. 67 (1881); Campbell v. Pullman Co., 169 N. Y. Supp. 1087 (1918).

[5] Haidenbergh v. St. Paul M. & M. R. R., 39 Minn. 3, 38 N. W. 625 (1888).

[6] Galveston v. Morris, 94 Tex. 505, 61 S. W. 709 (1901); Intern. R. R., 20 Tex. Civ. App. 587, 50 S. W. 732 (1899); St. Louis S. W. R. R. v. Tittle, 53 Tex. Civ. App. 220, 115 S. W. 640 (1909).

[7] 34 N. Y. 670 (1866).

[8] Alabama Great South. R. R. v. Gilbert, 6 Ala. 372, 60 So. 542 (1912); Evansville v. Duncan, 28 Ind. 441 (1867); Hallow v. Louisville R. R., 290 Ky. 287, 272 S. W. 740 (1925); Purcell v. Richmond R. R., 108 N. C. 414, 12 S. E. 954 (1891). Lack of notice to the passenger that adequate seating will not be provided, with the choice that necessarily follows of either accepting what the carrier is able to furnish or refusing it, implies an undertaking to supply fully sufficient accommodations. In the instant case, the plaintiff was led to believe, affirmatively, that a proper seat would be furnished him.