

moving at an excessive rate of speed, and that the train-men failed to keep such outlook as the ordinances of the city require at such places. He has accordingly recommended an allowance of the claim in the sum of \$4,500. Exceptions are taken to the finding of the master as last stated.

I have read all the testimony in the case taken before the master carefully, and while there is a great conflict in the same, as is usual in such cases, yet there is ample testimony in the record to support the finding that the freight train was moving at an unlawful rate of speed, and that the train-men were not exercising such vigilance as the law requires of them in such cases. If the finding of the master was the finding of a jury, the court could not rightfully set the finding aside, and it will not do so in this case.

The master also found that this boy was struck by the cow-catcher of the engine, or by some portion of the engine, and in that way received the injuries complained of. This finding is also objected to. It is insisted that the boy was standing by the side of the track, and that, after the engine passed him, he attempted to seize hold of some part of the train, and clamber onto the train, and in that way his foot was drawn under the wheel, and was crushed. It is sufficient to say that among all the witnesses who testified in the case there was only one witness who claimed to have been an eye-witness of the accident. That witness testified, in substance, that the boy was standing on or near the crossing, looking down the track at some boys who were moving down the track in the same direction that the train was moving, and that the cow-catcher of the engine, or some part of the engine, struck him, and occasioned the injury. The master, for reasons that were no doubt satisfactory to himself, saw fit to credit the testimony of such eye-witness, and found that the injury was sustained in the manner by her explained. There is nothing in the record that will warrant the court in overruling the finding of the master on that issue. It should stand as the verdict of a jury, and it will be suffered to so stand.

The boy being only six years old, no negligence can be imputed to him. Therefore the issue of contributory negligence is not in the case.

The result is that the finding of the master will be confirmed, and the claim will be allowed as recommended by him.

CENTRAL TRUST CO. OF NEW YORK and others v. WABASH, ST. L. & P. RY. CO. and others. (*In re* Intervening Petition of HOYLE.)

(*Circuit Court, E. D. Missouri, E. D. June 22, 1887.*)

CARRIERS—TRANSPORTATION BEYOND LINE.

The initial carrier of personal baggage over connecting lines of railroad is not liable for an injury to the baggage at a point beyond the terminus of its own line, unless it has assumed such liability by express agreement, or unless there is some arrangement in the nature of a partnership between it and the connecting carriers; and a finding that no such express agreement is shown

will be sustained, where it appears that a through ticket was purchased in the usual way, and that, although the purchaser of the ticket did not read the stipulations printed on it, a stipulation limiting the liability of the initial company selling it to losses occurring on its own line was printed on the ticket.

In Equity. Consolidated cause.

Dyer, Lee & Ellis, for intervenor.

Geo. S. Grover and H. S. Priest, for defendant.

THAYER, J. This is a claim for compensation for injuries to certain baggage while in transit from St. Louis to Boston, via the Wabash, Grand Trunk, West Shore, and Boston & Fitchburg Railroads. The injury was sustained in Canada on the line of the Grand Trunk Railroad. Following the ruling made in the case of *Myrick v. Michigan Cent. R. R.*, 107 U. S. 102, 1 Sup. Ct. Rep. 425, the master held that, in case of the transportation of persons and baggage from one point to another, over connecting lines of railroad, the initial carrier (in this case the Wabash Railroad) is not liable for an injury to the passenger or his baggage sustained beyond its own line, unless a special agreement is shown, by clear and satisfactory evidence, whereby the initial carrier is made responsible for what occurs on the lines of connecting carriers, and beyond its own terminus. The master held that the proof in this case did not establish such special agreement by clear and satisfactory proof, and accordingly dismissed the claim.

The rule of law which was applied to the case is undoubtedly correct. A common carrier is not liable for losses sustained beyond the terminus of its own line, unless it has assumed such liability by express contract, or unless some arrangement in the nature of a partnership exists between it and connecting carriers, which was not shown in this case. *Myrick v. Michigan Cent. R. R.*, 107 U. S. 102, 1 Sup. Ct. Rep. 425; *Railroad Co. v. Manufacturing Co.*, 16 Wall. 318; *Insurance Co. v. Railroad Co.*, 104 U. S. 157; *Elmore v. Naugatuck R. R.*, 23 Conn. 457; *Ellsworth v. Tartt*, 26 Ala. 733; *Knight v. Portland, S. & P. R. R.*, 56 Me. 234; *Milnor v. New York & N. H. R. R.*, 53 N. Y. 364; *Pennsylvania R. Co. v. Schwarzenberger*, 45 Pa. St. 208; *Burroughs v. Norwich & W. R. Co.*, 100 Mass. 26.

The only matter to be reviewed, therefore, is whether the master correctly found from the evidence that the claimant failed to show an express contract for safe carriage from St. Louis to Boston. There is little ground to question the master's finding on that issue. The evidence shows that intervenor inquired of the carrier's agent at St. Louis the price of through tickets, and whether passengers went through by that route without change of cars. Receiving an affirmative answer as to the last question, and information that the through fare was \$24.50, he bought two tickets. The tickets were what are known as "coupon tickets," indicating the route to be traveled over, and were attached to a contract containing numerous provisions; the first being that the Wabash Company in selling the tickets only acted as agent of the connecting lines, and would not be responsible beyond its own line. Claimant testifies

that he did not examine the tickets, but it nowhere appears that the carrier's agent resorted to any artifice to prevent him from so doing. What occurred in the case of the purchase of these tickets is probably the same that occurs in nearly every instance of the purchase of tickets for a long railroad journey, involving a passage over several connecting railroads. Now, conceding that the acceptance of a through fare by the initial carrier is some evidence of an undertaking on its part to become responsible beyond the terminus of its own line, though by no means conclusive evidence on that point, and conceding, further, that the written and printed contract attached to the coupon tickets is not to be taken as the sole evidence of the agreement, inasmuch as claimant did not read the contract or have his attention expressly called to the same, still the evidence is insufficient to prove such special agreement as the claimant relies upon to extend the initial carrier's common-law liability, and make it responsible for losses beyond the terminus of its own line.

Although the written and printed stipulations on the face of the tickets are not to be regarded as the sole evidence of the contract, yet such stipulations may be considered, in connection with what transpired when the tickets were purchased, for the purpose, at least, of determining what were the carrier's intentions at the time, and what liability it intended to assume. Referring to the contract attached to the tickets solely for that purpose, and reading the same in the light of all that was said and done on that occasion, and it is manifest that the carrier did not intend to assume any liability beyond its own line, and never gave its assent to an agreement for safe carriage over the entire route. There was no meeting of minds on that proposition, and for that reason no express agreement to that effect. In the absence of such an undertaking, assented to by both parties, (the carrier and the passenger,) the former is only subject to its common-law obligation to safely carry over its own line, and safely deliver to the connecting carrier.

The master's report is accordingly confirmed.

VIELE v. VAN STEENBERG.

(*Circuit Court, N. D. Iowa, W. D. May Term, 1887.*)

1. SWAMP LANDS—CONVEYANCE BY COUNTY—VALIDITY.

A conveyance by a county of swamp lands in violation of the act of Legislature of Iowa of January, 1855, prohibiting the sale or disposal of such lands until the title thereto is perfected in the state, is void.

2. SAME—PURCHASERS.

Where the conveyance by a county of certain lands is expressly forbidden by act of the legislature, purchasers are bound to know that the county cannot convey.

3. DEEDS—OPERATION—AFTER-ACQUIRED TITLE—PUBLIC LANDS—TAXATION.

B. received a conveyance of certain swamp lands from a county violating said act, and by mesne conveyances the title vested in one S. The conveyance