

**THE FEDERAL RAILWAY DIGEST: A
CUMULATIVE QUARTERLY DIGESTING ALL
DECISIONS BOTH STATE AND FEDERAL,
PERTAINING TO THE CIVIL AND CRIMINAL
LIABILITY OF INTERSTATE CARRIERS BY
RAIL, VOL. II, NO. 4, APRIL 1918**

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The Federal Railway Digest: A Cumulative Quarterly Digesting All Decisions Both State and Federal, Pertaining to the Civil and Criminal Liability of Interstate Carriers by Rail, Vol. II, No. 4, April 1918 by William J. Ingersoll

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WILLIAM J. INGERSOLL

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Federal Railway Digest

A Cumulative Quarterly

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Criminal Liability of

Interstate Carriers by Rail

Under All Acts of Congress

WILLIAM J. INGERSOLL, Editor

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NOTICE

This Quarterly completes Volume II of The Federal Railway Digest. It supersedes Nos. 1, 2 and 3 thereof, which should be destroyed. All cases reported to March 1, 1918, are herein digested. This number should be used in connection with Volume I, which digests all earlier cases.

In this number we begin digesting cases relating to the operation by the Federal Government of the railway systems of the country. See the title "Government Operation of Railways." The full text of the Act of Congress of March 21, 1918, relating to Federal operation is given in the Appendix to this Quarterly.

We wish to call attention to the recent decisions pertaining to the Cummins Amendment which are digested in this issue on page 55.

Volume III of this publication will continue to digest all current cases pertaining to the civil and criminal liability of railway companies under all Acts of Congress.

**THE FEDERAL
LAW BOOK CO.**

THE FEDERAL RAILWAY DIGEST

A Cumulative Quarterly

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Vol. II

APRIL, 1918

No. 4

ANIMALS

See Carriers of Interstate Freight and Express, VII

BOILER INSPECTION ACT

FEDERAL

See Federal Ry. Digest, Vol. I, No. 2, pp. 7-8.

Effect of amendment of Boiler Inspection Act on state laws regulating headlights, see Carriers of Interstate Freight and Express, II, C. 2, (d).

(No new decisions.)

CARRIAGE OF PERSONS

- I. IN GENERAL.
(No new decisions.)
- II. FARES AND TICKETS.
- III. PASSES.
 - A. In General.
(No new decisions.)
 - B. Contracts to Issue.
 - C. To Whom Issued.
 - 1. In General.
(No new decisions.)
 - 2. Caretakers of Live Stock.
 - 3. Employees and Their Families.
(No new decisions.)
 - D. Limitation of Liability.
 - E. Improper Use of Passes.
(No new decisions.)
- IV. OBTAINING TRANSPORTATION IN VIOLATION OF LAW.
 - A. In General.
(No new decisions.)
 - B. Expulsions.
 - 1. In General.
(No new decisions.)
 - 2. Use of Improper Ticket.
(No new decisions.)
 - 3. Traveling Wrong Route.
(No new decisions.)
 - C. Injury or Death.
(No new decisions.)

I. IN GENERAL.

See generally same section Federal Ry. Digest, Vol. I, No. 3, pp. 7-11 and No. 4, pp. 4-5.

(No new decision.)

II. FARES AND TICKETS.

See also same section Federal Ry. Digest, Vol. 1, No. 3, p. 7.

Violating Hepburn Act by Wrongful Use of Return Portion of Ticket.

To permit a stranger who purchased the return portion of an interstate ticket for less than the regular rate, to use the same in violation of a stipulation that the ticket should be used only by the original purchaser, would, in violation of the Hepburn Act, give the former a preference by making him a lesser rate for the same class of ticket and the same service than the original purchasers of similar tickets would obtain. *Boston v. Southern Pacific Co.*,— Ky.—, 194 S. W. 814.

Use by Wife of Husband's Mileage.

Where the owner of two mileage books in exchange for coupons therefrom, ob-

tained two mileage tickets for the interstate use of himself and his wife who accompanied him, the carrier was not justified in forfeiting the ticket presented by the wife and the book on which it was issued, under a tariff rule filed with the Interstate Commerce Commission forbidding the use of the mileage or exchange tickets by persons other than the original purchaser of the book, since the book and ticket was presented by the original purchaser within the meaning of such rule. *Southern R. Co. v. Campbell*, 239 U. S. 99, 60 L. ed. 165, 36 Sup. Ct. Rep. 33, affirming 94 S. C. 95, 77 S. E. 745.

Misrepresenting Scope of Mileage Ticket.

When an agent of a carrier sold a mileage book and issued an exchange ticket thereon for an interstate trip over the line of a connecting carrier, assuring the purchaser that the mileage was good on such line although the book itself and the duly filed tariffs of the connecting carrier showed the contrary, the selling carrier is not answerable to the purchaser in damages for the misrepresentations of its agent, where the purchaser was unable to obtain return transportation on such mileage over the line of the connecting carrier and was ejected from one of its trains for his refusal to pay fare, since the law charged the purchaser with knowledge of the facts. *Alabama Great So. R. Co. v. Vermillion*, — Ala. App. —, 77 So. 67.

III. PASSES.

See also same section Federal Ry. Digest, Vol. I, No. 3, pp. 8-9, No. 4, pp. 4-5.

Criminal liability for illegally issuing or using passes. See same section Vol. I, Federal Ry. Digest, No. 4, p. 4.

A. In General.

(No new decisions.)

B. Contracts to Issue.

See also same section Federal Ry. Digest, Vol. I, No. 3, p. 8.

Contract to Pay for Services With Transportation.

An interstate carrier that received a map and agreed to pay therefor with transportation is answerable for its equivalent in money where the passage of the Hepburn Act rendered performance of the original agreement impossible. *New York Central & Hudson River R. Co. v. Gray*, 239 U. S. 533, 60 L. ed. 461, 36 Sup. Ct. Rep. 176, affirming 161 App. Div. 924, 145 N. Y. Supp. 1125.

Contract to Furnish Laborers Return Transportation.

Where a railway company promised laborers free transportation home every two weeks to another state, but did not furnish it, and on their discharge refused to provide them with transportation back home, the carrier is not liable for the breach of its agreement, since it would have violated the Hepburn Act had it complied with its promise. *Southern R. Co. v. Linear*, — Tenn. —, 198 S. W. 887.

Contracts in Consideration of Conveyance or Lease of Land.

— Enforcement.

Where, prior to the passage of the Hepburn Act, land was conveyed to an interstate carrier for railway purposes in consideration of an agreement to give the grantor annual passes during his lifetime, the agreement is enforceable after the passage of such law, with respect to interstate transportation, notwithstanding the subsequent enactment of a state law prohibiting it, since, with respect to the contract in question, the state law violated the provision of the Federal Constitution with reference to impairing the obligation of contracts. *Short v. Cleveland, Cincinnati, Chicago & St. Louis R. Co.*, 18 Ohio N. P. (N. S.) 537.

Where land was conveyed to an interstate carrier for railway purposes prior to the enactment of the Hepburn Act, in consideration of an agreement by the carrier to issue the grantor annual free passes during his life, the refusal of the carrier to do so after the passage of such law will permit the grantor to recover the land by ejectment. *Short v. Cleveland, Cincinnati, Chicago & St. Louis R. Co.*, 18 Ohio N. P. (N. S.) 537.

An action by a lessor railway against its lessee to enforce a covenant to provide the officers of the lessor with annual passes, does not, because of the contention of the invalidity of such stipulation under the Act Regulating Commerce, make the action one arising under the Constitution or the laws of the United States so as to confer original jurisdiction on the Federal courts. *Peterborough R. R. v. Boston & Maine R. Co.*, — C. C. A., 239 Fed. 97.

A Federal court does not have jurisdiction on the ground of diverse citizenship of an action by the officers of a lessor railway to enforce a covenant of the lease to furnish the former with annual passes, where both the lessor and the lessee are incorporated in the state wherein the action is brought. *Peterborough R. R. v. Boston & Maine R. Co.*, — C. C. A., 239 Fed. 97.

C. To Whom Issued.

See generally same section Federal Ry Digest, Vol. I, No. 3, p. 9, and No. 4, p. 8.

1. Caretakers of Live Stock.

See same section Federal Ry. Digest, Vol. I, No. 3, p. 9.

Power to Issue.

Section 1 of the Act Regulating Commerce permits interstate carriers to issue free transportation to persons who accompany interstate shipments of live stock as caretakers. *Norfolk Southern R. Co. v. Chatman*, 244 U. S. 276, 61 L. ed.—, 37 Sup. Ct. Rep. 499, affirming 138 C. C. A. 350, 222 Fed. 802.

The prohibition of section 1 of the Act Regulating Commerce against the granting of "free passes" by carriers does not apply to such transportation when issued to caretakers who accompany interstate shipments of live stock, since they are passengers for hire. *Norfolk Southern R. Co. v. Chatman*, 244 U. S. 276, 61 L. ed.—, 37 Sup. Ct. Rep. 499, affirming 138 C. C. A. 350, 222 Fed. 802.

A uniform live stock contract for interstate transportation, which is part of a carrier's established tariff rates, permitting the transportation of a caretaker without charge other than the regular freight rate, is not in violation of section 2 of the Act Regulating Commerce forbidding compensation for the carriage of passengers to be made in services, commodities, or in any other form than money. *Tripp v. Michigan Central R. Co.*, 151 C. C. A. 385, 238 Fed. 449, certiorari denied 244 U. S. 648, 61 L. ed.—, 37 Sup. Ct. Rep. 475.

The issuance of passes for the interstate transportation of caretakers who accompany shipments of live stock for the going portion of the journey is not prohibited by a tariff provision that "free or reduced transportation shall not be issued for shippers or caretakers in charge of live stock shipments. . . . and all such shippers or caretakers shall pay full fare returning." *Norfolk Southern R. Co. v. Chatman*, 244 U. S. 276, 61 L. ed.—, 37 Sup. Ct. Rep. 499, affirming 138 C. C. A. 350, 222 Fed. 802.

Consideration.

The fare collected for the transportation of a caretaker who accompanies an interstate shipment of live stock under a pass issued pursuant to section 1 of the Act Regulating Commerce as a part of the freight charges, is paid in money when issued under a tariff which clearly shows the terms of the shipment of the stock with the transportation of such caretaker included, in a form which must be consid-

ered as satisfactory to the Interstate Commerce Commission. *Norfolk Southern R. Co. v. Chatman*, 244 U. S. 276, 61 L. ed.—, 37 Sup. Ct. Rep. 499, affirming 138 C. C. A. 350, 222 Fed. 802.

The objection that the published tariffs of a carrier do not specify how much of the stipulated freight rate for the interstate transportation of live stock shall be treated as payment for the transportation of the stock and how much for the carriage of the caretaker, and that the payment for the transportation of the latter is not specifically stated in the passenger tariffs, cannot be considered in an action against a carrier for injuries sustained by a caretaker, since under the Act Regulating Commerce the Interstate Commerce Commission alone has jurisdiction to determine and prescribe the forms in which tariffs and schedules shall be prepared, which is an administrative function with which the courts will not interfere in advance of prior application to the Commission. *Norfolk Southern R. Co. v. Chatman*, 244 U. S. 276, 61 L. ed.—, 37 Sup. Ct. Rep. 499, affirming 138 C. C. A. 350, 222 Fed. 802.

Caretaker as Passenger for Hire.

A caretaker who accompanies an interstate shipment of live stock is a passenger for hire while traveling on a pass issued by an interstate carrier under the provisions of section 1 of the Act Regulating Commerce. *Norfolk Southern R. Co. v. Chatman*, 244 U. S. 276, 61 L. ed.—, 37 Sup. Ct. Rep. 499, affirming 138 C. C. A. 350, 222 Fed. 802.

An interstate contract of affreightment providing for the transportation of a caretaker with live stock without charge other than the regular freight rate, is not a free pass within the meaning of the Hepburn Act, and the caretaker is a passenger for hire. *Tripp v. Michigan Central R. Co.*, 151 C. C. A. 385, 238 Fed. 449, certiorari denied 244 U. S. 648, 61 L. ed.—, 37 Sup. Ct. Rep. 475.

Defenses.

— Failure of Tariff to Provide for Issue.

When sued for injuries sustained by a caretaker while accompanying an interstate shipment of live stock, and traveling on a pass issued by an initial carrier pursuant to the terms of its established tariffs, a connecting carrier cannot defend the action on the ground that its own established tariffs did not permit the issuance of such passes. *Norfolk Southern R. Co. v. Chatman*, 244 U. S. 276, 61 L. ed.—, 37 Sup. Ct. Rep. 499, affirming 138 C. C. A. 350, 222 Fed. 802.

— Failure to Give Notice of Injury.

An action will not lie against a carrier for injuries sustained by a caretaker ac-

companying an interstate shipment of live stock, where he failed to comply with the terms of the shipping contract which required written notice of damages to be given within 30 days as a condition precedent to the carrier's liability. *Missouri, Kansas & Texas R. Co. v. Lynn*, — Okla. —, 161 Pac. 1068.

D. Limitation of Liability.

See also same section Federal Ry. Digest, Vol. I, No. 3, p. 9.

Validity.

— In Pass of Caretaker of Live Stock.

A stipulation in a pass issued a caretaker who accompanies an interstate shipment of live stock, and which is issued under the provisions of section 1 of the Act Regulating Commerce, by which he assumes all risks of accident or damage to his person and by which he releases and discharges the issuing carrier from all liability for any personal injuries or damages which he may sustain, whether due to the negligence of the carrier or its servants or otherwise, is unreasonable and void, since such caretaker is a passenger for hire. *Norfolk Southern R. Co. v. Chatman*, 244 U. S. 276, 61 L. ed. —, 37 Sup. Ct. Rep. 499, affirming 138 C. C. A. 350, 222 Fed. 802.

A caretaker, who was required by a carrier's rules to accompany an interstate shipment of live stock, was a passenger for hire when transported without extra charge in consideration of the freight rate paid under a contract which was part of the carrier's duly established schedules, and which required the shipper to indemnify the carrier from liability for injuries sustained by the caretaker, so that a release signed by the latter relieving the car-

rier from liability for injuries caused by its negligence, is void. *Tripp v. Michigan Central R. Co.*, 151 C. C. A. 285, 238 Fed. 449, certiorari denied 244 U. S. 648, 61 L. ed. —, 37 Sup. Ct. Rep. 475.

The Carmack Amendment does not permit a carrier to relieve itself by contract in consideration of furnishing free transportation to a caretaker of live stock, from liability for injuries sustained by him. *Adams v. Chicago, Rock Island & Pacific R. Co.*, — Iowa, —, 161 N. W. 295.

E. Improper Use of Passes.

See same section Federal Ry. Digest, Vol. I, No. 3, p. 10.

(No new decisions.)

IV. OBTAINING TRANSPORTATION IN VIOLATION OF LAW.

See also same section Federal Ry. Digest, Vol. I, No. 3, pp. 10-11.

A. In General.

(No new decisions.)

B. Expulsion.

See also same section Federal Ry. Digest, Vol. I, No. 3, p. 10.

(No new decisions.)

C. Injury or Death.

See also same section Federal Ry. Digest, Vol. I, No. 3, p. 11.

(No new decisions.)