

N. J. Court of Errors and Appeals.

THE DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY,
Plaintiffs in Error,

vs.

JOHN F. WALSH,
Defendant in Error.

In Error to
New Jersey
Supreme
Court.

Points for
Plaintiffs in
Error.

FACTS.

On the evening of May 10, 1884, John F. Walsh entered a train of the Delaware, Lackawanna and Western Railroad Company at Newark, at about 11.38 P. M. (p. 8.) Walsh took his seat on the steps on the north side of the front platform of the first coach behind the smoker. p. 9.

When the conductor, Augustus W. Reed, came through, Walsh gave him a ticket which the conductor swears was from Newark to Roseville, but which Walsh swears was from Newark to Orange.

The stations between Newark and Orange are in the following order: Roseville, Grove Street, East Orange or Arlington avenue, Brick Church, Orange.

There were on the train two coaches beside the combination car, by which is meant a car half baggage and half smoker. p. 38.

The conductor says that he took three tickets on that platform; that they were all Roseville tickets (p.39); that Walsh gave him one of these tickets and two other men the other two. p. 39.

His testimony is, briefly, as follows :

“Q. When you came to the platform on which Mr. Walsh was sitting how many tickets did you take on that platform ?

A. Three, sir.

Q. And what were they ?

A. Three Roseville tickets.

Q. Who gave them to you ?

A. Mr. Walsh gave me one ; I took the two from these two gentlemen first, and then Mr. Walsh made three.

Q. (By the COURT.) Have you any doubt that was a Roseville ticket ?

A. No, sir ; I have not.

Q. You are sure of it ?

A. Yes, sir.

Q. Did you look at it ?

A. Yes, sir.

Q. You got three tickets ; one from Mr. Walsh and two from the other two persons on that platform ?

A. Yes, sir.

Q. All Roseville tickets ?

A. Yes, sir.

He swears that his brakeman, Michael Boyle, stood there, and that he, Reed, called the brakeman's attention to it, and told him, “These men are going to Roseville,” the two men standing back of him and the one sitting down. p. 41. Walsh was the one sitting down, p. 41. That he then went through working his train, p. 42.

Michael Boyle, the brakeman, corroborates the conductor, and says that the conductor showed him the tickets ; that he, Boyle, saw them ; that the conductor told him to look out for the men ; and that the conductor pointed out Walsh and two other men, p. 52.

At Roseville the brakeman said to Walsh, “Roseville.” Walsh replied, “I know it.” The brakeman

said, "The conductor said your ticket is for Roseville," p. 53.

The brakeman says that when the train reached Roseville that two of the three men that the conductor pointed out to him got off, but that Walsh remained. He then says, "And I hollered out 'Roseville,' and told him, 'You had a Roseville ticket.' " He didn't say anything to me, and I told him he would have to get off; he said he would have to see the conductor, and I went back for the conductor in the rear car, and I told him about it; I told him, 'That man on the steps didn't get off,' p. 53. The conductor, upon being so told, started back. By the time he reached the platform where Walsh sat, the train had reached Grove street. What occurred is variously related by the witnesses, as follows:

Reed, conductor. "I opened the door and stepped outside just as we were just stopping; then I told Mr. Walsh he had a ticket for Roseville, and he would have to get off."

Q. What did he say?

A. I don't remember Mr. Walsh saying anything; he was sitting down; all I remember Mr. Walsh doing was getting up and getting off, p. 42, line 33-40.

MICHAEL BOYLE.

He (the conductor) came up through the car and when we got to Grove street all that we told him (Walsh) was 'to get off,' that he had a Roseville ticket, and he didn't say anything else to him; he said he wanted a ticket or he must get off.

Q. What did Mr. Walsh say?

A. Mr. Walsh got off; he did not say a word.

Q. He didn't say anything?

A. No, sir.

Q. Did the conductor—how much passed between them; just that one remark?

A. That was all; the conductor told him to get off, that was all.

Q. The conductor didn't touch him?

A. No, sir, he didn't lay his hands on him," p. 53, line 40; p. 54, line 1-15.

Walsh says, "He," referring to the conductor, "came through the passenger coach and came up on the platform of the smoker, says he, 'your ticket; ' I said, 'I gave you my ticket; ' he says, 'you gave me a ticket for Roseville; ' I said, 'no, sir; I gave you a ticket for Orange; ' he said, 'you will have to give me another ticket or get off the car; ' I got up from where I was sitting and said, 'I gave you a ticket for Orange; ' he says, 'get off the car.'

Q. Where was he standing when he said this?

A. On the hind platform of the smoker.

Q. That was directly in front of you; that is, the two platforms face each other, and you were on the passenger platform?

A. I said, 'I can prove by the ticket agent at Newark that I bought my ticket of that I paid him 12 cents for my ticket, which entitles me to go to Orange; ' he came over on the platform where I was, and says to me, 'If you don't get off this car I will put you off; ' I said, 'You can put me off the car if you choose, but you or the company you represent will pay for it; ' he said, 'You get off the car; ' so I got off the car, and he followed me up like and bid me good night, and I said, 'Good night, I will see you later," p. 11, line 30-40; p. 12, line 1-16.

Bailey Loyd. Stood on the hind platform of the smoking car, p. 27, line 3. The conductor told Mr. Walsh he gave him a Roseville ticket, and Mr. Walsh says, "I didn't; I gave you an Orange ticket;" and he says, "You will have to give me another ticket or get off the train."

Q. The conductor said that?

A. Mr. Walsh said, "I gave you an Orange ticket and you took it up;" he says, "You will have to give me another ticket or get off—come, come, get off or give me another ticket," and Mr. Walsh got off.

Q. Do you know how many times the order to get off was repeated?

A. No, sir; I don't, two or three times.

Q. Where was the conductor, with reference to Mr. Walsh, when he told him to get off last?

A. Right alongside of him.

Q. He stood right alongside of him all the time?

A. While this conversation was going on, p. 27, line 40; p. 28, line 1-17.

John Loyd. Was standing on the rear of the smoker, p. 29, line 30.

Mr. Reed said, "tickets;" Mr. Walsh says, "I gave you my ticket;" Mr. Reed said, "yes, you gave me a ticket for Roseville;" "oh, no," he says, "I gave you a ticket for Orange;" "well," he says, "you will have to give me a ticket or get off;" Mr. Walsh says, "*no, I won't do anything of the kind; I can prove I bought a ticket from the ticket agent at Newark, and the ticket was for Orange*, p. 30, line 26-33; Mr. Walsh says, "I gave you a ticket for Orange and am entitled to a ride there! He says: "Come, get off, or give me a ticket." Mr. Walsh says, "I will get off, but either you or the company will hear from me." And Mr. Reed says, "Good night;" and Mr. Walsh says "Good night," and off he went, and that was the last I heard from him, p. 31, line 8-17.

Charles Ryno. Says he was on the front platform of the passenger coach, p. 34, line 35-40. Mr. Walsh was sitting on the platform, p. 35, line 6. He heard what passed, but can't recollect the conversation.

There is no doubt (as it now appears) that Walsh bought an Orange ticket at Newark.

This road, all the way from Newark to Orange, runs through a city; that is, the whole distance is built up, and the streets are paved and sidewalked, p. 13, lines 30-40; p. 14, lines 1-40.

There was a horse car line from Grove street to

Orange, the track of which was about fifty yards from this station, p. 14, lines 26-28; p. 49, lines 30-40.

There were several cars running there after that hour, the whole distance, p. 50 and 51.

There was another train on the railroad after that hour, p. 63, lines 30-40.

The last train passes about twenty minutes before one o'clock, p. 63, lines 30-40, and see time table.

The station was open at that hour, and continued open until the last train passed, p. 63, lines 30-40, and lights burning there, p. 64.

The fare from Newark to Brick Church is ten cents, and to Orange twelve cents, p. 41, lines 20-25. If paid on the train, the fare from Grove street to Orange would be twenty cents, and to Brick Church sixteen cents, with a draw-back of ten cents in each case, p. 43, lines 30-35. From Roseville to Brick Church the fare is six cents, and to Orange ten cents, with an additional payment of ten cents in each case, if paid on the cars, for which the passenger would get a drawback, p. 44, lines 1-5.

It was a frequent occurrence that passengers on that road would buy Roseville tickets when they intended to go to Orange and then endeavor to make the ride on the cheaper ticket, p. 41, line 15-25.

John Long says: "Q. Do you have, sometimes, Roseville tickets offered you by people, and then they attempt to ride further?"

A. Very nearly every night in the week," p. 61, line 40; p. 62, line 1-3.

The fare from Newark to Grove street was five cents.

The plaintiff's residence was three-quarters of a mile from where he was put off, p. 13, line 2.

The conductor denies that he said good-night to Walsh. He says that he said, "all right" to his rear brakeman, which Walsh probably mistook for "good night," p. 48, bottom.

The fare on the horse cars was from Newark to Orange ten cents, and that was the largest charge for any ride on that road, p. 16, line 23.

Reed was a competent and faithful conductor, p. 65.

The conductor's action was either justified by the fact of Walsh not having a ticket for Orange, or else the conductor was laboring under an honest mistake.

Q. Have you any doubt that was a Roseville ticket?

A. No, sir, I have not.

Q. You are sure of it?

A. Yes, sir.

Q. Did you look at it?

A. Yes, sir.

P. 39, line 39-40.

P. 40, line 1-3.

The action as originally brought was brought in case. On the trial the plaintiff, at the close of his case and before resting, asked and obtained leave to amend to trespass, p. 37.

At the close of the plaintiff's case the defendant moved for a non-suit, which was refused, p. 37.

The defendant requested the Judge to charge the jury amongst other things, as follows:

THIRD. If the jury believe that the conductor was mistaken, then the verdict can only be for the actual damages suffered by Walsh, namely, the price of his ticket, what it cost him to get home, and any other money loss to which he was actually put, and the inconvenience of walking home, p. 79.

SIXTH. That in order to justify any damages other than merely compensatory, there must have been an ejection, not only unlawful but forcible, p. 79.

SEVENTH. That there can be no damages by way of punishment or smart money, p. 79.

EIGHTH. That there can be no damages in this case based upon any circumstances of indignity, p. 79.

The judge did charge the jury that if they accepted the conductor's version, that when he told the plaintiff to get off, he rose and quietly got off without saying a word; that then the verdict must be for the defendant. But that if when the conductor told him to give him another ticket or get off the cars, he told the conductor that he bought a ticket for Orange, and that he could prove it; and that the conductor standing near enough to eject him, several times directed him to leave, and one of the witnesses says, used a gesture that would indicate an intent to carry that purpose into execution; and if they believed that that was done, and that the plaintiff, although he was not touched by the conductor, was under a well grounded apprehension that the conductor, if he did not leave the cars, would put his command in force by forcibly ejecting him, then his instruction was that that was a sufficient exercise of force to support an action of this kind, p. 83.

The Court further charged that the plaintiff was under no obligation to pay his fare and remain in the train, p. 84, line 40; p. 85, line 43.

The Court further charged that there was no evidence in the case tending to show that the conduct of the defendant was either malicious or wilfully oppressive, p. 84, and that the damages could be only compensatory, p. 84.

And then charged in these words: "*Besides compensation for the injury that the plaintiff received from the fact that he was left at that time of night at that station, you may give an additional sum as part of your compensation by way of damages for the indignity and*

consequent injury to his feelings, in being required to leave the train under the circumstances in which he left it. That rule of damages is settled to be a proper rule by the Court of Errors in a recent case decided in that Court, that where a person is on a car or ferry boat having paid his fare, and entitled consequently to a ride, if he is wrongfully ejected, the jury may, in awarding damages, allow him a reasonable sum as compensation for the indignity and injury to his feelings, in being thus treated. That is the rule of damages that is now settled by the decision of the highest Court in the State."

The verdict was for the plaintiff and the damages were assessed at \$500.

I.

It was error to refuse the non-suit.

The action was trespass. The tort, if any, was committed not by the defendant, but by the defendant's servants.

There was no battery. The conductor did not lay his hands upon the plaintiff.

There were no such facts proven as would justify a judgment in trespass against the defendants for the mistake of the conductor.

The breach of contract, if there was one, was not the subject matter of a judgment in trespass. Damages for that offense could be recovered, if at all, only in an action of assumpsit.

There being then no ground for a recovery in that action, the Court ought to have non-suited.

II.

The charge of the Judge was erroneous, and the defendants were injured by the error.

The Court, we respectfully submit, misapplied the rule laid down by the Court of Errors in *Allen v. C. & P. Ferry Co*, 17 Vroom 198

That case was not similar to this case.

In that case the ejection was forcible as well as unlawful.

See the opinion of the Chancellor, p. 199.

In that case the plaintiff's counsel requested the Court to instruct the jury that if the plaintiff had paid his fare before he was ejected from the boat, he would be entitled to be awarded a fair and reasonable compensation for the indignity and consequent injury to his feelings on being thus treated. To charge this the Judge refused, and charged that if the jury found that the plaintiff did pay his fare, the damages *under the evidence and pleadings in the cause* should be only compensation for his loss of time and the money he paid and the injury to his clothing, if any.

Your Honors will perceive that the opinion carefully limits the ruling to the circumstances of that case as developed in the evidence therein, and the opinion expressly mentions forcible as well as unlawful ejection.

The facts in that case were these : That Mr. Bender, the company's agent, grabbed the plaintiff by the coat. Bender got his feet against the seat ; that his foot slipped ; that Bender fell across the seat, got up and grabbed the plaintiff again, and tugged and pulled until he found that it was no use by him-

self. The plaintiff resisted his pulling by taking hold of the irons on the seat aside of him ; that the breast of his coat was torn ; that Bender left him and went to the end of the cabin and called to one of the deck hands, who came, and then both of them took hold of him, and he, thinking that it was useless to resist them, got up and they led him off the boat. See the printed book of that case, pp. 5 and 6.

There was an assault and battery. There was great force and violence used—serious indignity.

The rule there laid down was applicable and proper. But that rule does not fit this case, and, we respectfully submit, was not intended by the Court to cover a case like the one now before the Court, and ought not to be applied.

We respectfully submit that in cases of this kind where a dispute arises between a passenger and the conductor, and there is an evident misunderstanding, and no violence is used, and no special circumstances of indignity, that the rule laid down should be as follows: that in that case, it is the duty of the passenger, if able to do so, to pay the exact fare and rely on his remedy to recover it back rather than to force the conductor to expel him, with a view to sue for damages for a wrongful ejection, and that if under those circumstances the passenger insists upon expulsion, he ought to recover no other damages than he could have recovered if he had left the train and sued for a breach of the contract.

Hall v. Memphis & Charleston R. R. 9
Am. and Eng. R. R. cases, p. 348, &c.
3 Woods' Ry. Law, p. 1439.
Cincinnati, &c., R. R. Co. v. Cole, 29
Ohio State, 126.

In all cases when large damages have been sustained there have been acts of indignity other than the mere requirement to leave the train, some ag-

gravating circumstances ; as illustrations of the principle see—

Lake E. & W. Ry. Co. v. Fixe, 11 Am. and Eng. R. R. cases, 109.

Dawson v. L. & N. R. R. Co., 11 A. and Eng. R. R. cases, 134.

The question comes up squarely in the present case.

We respectfully submit, that there is no justice in permitting every passenger who is called upon to pay his fare, even if it be a second time, to create a disturbance, to so conduct himself as to procure his ejection from the train, and then to bring an action for heavy damages.

Such a course tends to create a disturbance on trains, to inconvenience passengers, to create danger by the stoppage of trains at unusual places, to hinder, delay and vex companies, without doing the passenger any corresponding good. The amount at issue is generally small, and unless the conductor be evidently vexatious and malicious, the passenger ought to yield to his demand rather than to set in motion all the consequences above mentioned.

The learned Judge who sat at the trial attempts to draw a distinction between punitive damages and damages by way of compensation for indignity, which distinction, we respectfully submit, is not admissible and is not intended by the opinion in the Allen case. The request there was in effect to charge for punitive damages under the circumstances of that case, and the Appellate Court held that the charge ought to have been there made, but in this case there were no circumstances upon which to base punitive damages, and the Court not only ought to have so charged, but ought to have charged that damages for indignity and consequent injury to feelings were punitive in their nature and inadmissible in this case.

III.

The verdict was contrary to law, and excessive.

The proof was that the plaintiff lost the price of the ride from Grove street to Orange, a sum not exceeding ten cents; and that he lost the time it took to walk home, a distance not exceeding a mile—and no other inconvenience or pecuniary loss was shown.

If the conductor's statement is true, then there ought to have been no verdict, for he was justified in ejecting the plaintiff.

The verdict, therefore, must have been based on the belief in the minds of the jury that the conductor was mistaken. Accepting this fact then as found in the case, the verdict must have been intended almost wholly to compensate the plaintiff for the injury to his feelings. But this was contrary to law, if we are correct in our argument under the second head. And in either case it was greatly excessive.

Hall v. M. & C. R. R. Co., 9 Am. & Eng.

R. R. Cases, p. 348, &c.

Aldrich v. Palmer, 24 Cal. 513.

Tarbel v. Central Pacific R. R. Co., 24
Cal. 616.

Law v. East Tennessee, Va. & Georgia R.
R. Co., 2 Am. & Eng. R. R. Cases,
278.

An accurate decision of this case is of very great importance to the railroad companies of this State. They must carry all passengers that come. They must also act by agents. Men are human. They select the best men possible. On crowded trains running over roads with frequent stations, especially at night, it is simply impossible that conductors should never make mistakes. The only wonder is that con-

ductors make so few mistakes as they do. There is no justice in laying down the rule that a conductor must in every instance be infallibly right. If the conductor makes an honest mistake, and the passenger is able to pay the fare, he ought to pay it and take his remedy against the company afterwards for the breach of contract. There is no justice in recovering large damages for small injuries against corporations, any more than there is against individuals. The Justices Courts are open. They are cheap tribunals where any wrong of that kind can be set right. Moreover, the instances where corporations would refuse without process, to right the wrong, are very infrequent.

We submit, therefore, to the Court that the rule applied by the trial judge in this case has never been applied in this State by the Court of last resort, to such a case as this, and that public policy requires that it should not be applied under circumstances of this kind.

BEDLE, MUIRHEID & MCGEE,
of Counsel with Plaintiffs in Error.

N. J. Court of Errors and Appeals.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,

Plaintiffs in Error,

vs.

JOHN F. WALSH,

Defendant in Error.

In Error to 10

~~Essex Circuit~~
the Supreme Court.

BRIEF FOR DEFENDANT IN ERROR.

I. The motion to nonsuit was properly denied; the plaintiff fully made out his case. He proved:

1st. That he purchased, received, and paid for a proper ticket to Orange, and gave the same properly to the conductor of the train on which he took passage. (*Case*, p. 8, l. 10, *seq.*; p. 10, l. 30, *seq.*; p. 18, l. 20; p. 19, l. 20, *seq.*; p. 24, l. 10, the last the testimony of the ticket agent of the defendant company.

2d. That he was unlawfully and forcibly ejected from the train about midnight, some distance from the station for which he took passage, and to which his ticket entitled him to ride, under a charge that he was trying to defraud the company by riding on an insufficient ticket, to wit: one for Roseville, costing six cents, instead of one to Orange, costing twelve cents. Plaintiff's testimony p. 11, l. 30, *seq.*; p. 15, l. 30, *seq.* Plaintiff testifies that he was ordered off four times, and says the conductor "came as though he was going to hit me." Witness Lloyd, p. 31, l. 30, testifies to threatening attitude of conductor.

3d. That he suffered damages for which he was entitled to recover; that he walked to his home, three-quarters

20

30

40

ters of a mile distant, at midnight, no conveyance being accessible, (p. 12, l. 20, *seq.*;) that the charge that he was attempting to defraud the company was made, and his ejection took place in the presence of witnesses Bailey Lloyd, p. 28; John Lloyd, p. 31; Charles Ryno, p. 35, l. 30; all of whom knew the plaintiff, and resided in the vicinity in which he lived, and where he was the proprietor of a harness making establishment, p. 1, l. 34.

10 II., III.; IV. The testimony, pp. 61 and 62, Case, upon which these assignments are based, was properly excluded. Exactly stated, it was an attempt to show that there were persons who endeavored to defraud the company by riding on insufficient tickets over this portion of the railroad. It is within the province of the Judge to "exclude evidence of facts, which, though relevant to the issue, appear to him too remote to be material under all the circumstances of the case." *Stephens' Digest of Ev.*, p. 4.

20 But this evidence clearly had no probative force upon the issue in this cause, which was whether *the defendant* undertook to ride upon an insufficient ticket. If everybody else had made this a practice it would not have tended to prove that the defendant did it. The general experience of other conductors proved nothing, with reference to the particular experience of the conductor Reed on the night in question.

30 V. The instruction of the Court, involved in the fifth assignment, was correct. The exact language is found, p. 82, l. 18, *seq.* Coercion, because of reasonable apprehension of the use of threatened force, is coercion by force. Raising the fist in a threatening manner. *Murry vs. Boyne*, 42 Mo. 472. Ordering one to leave premises, and upon refusal assuming, together with others, threatening attitudes and uttering threats. *Reud vs. Coker*, 22 L. J., C. P. 201, 17 Jur. 990. Advancing in a threatening attitude. *Stephen vs. Myers*, 4 Car. and P., p. 349; *State vs. Varney*, 65 N. C. 532; *Keyes vs. Devlin*, 3 E. D. Smith, 518; *Shorter vs. The People*, 2 Comst. 193, all held to
40 constitute assaults for which trespass would lie.

CAMPBELL, *J.*, in *Brushaber vs. Stegemann*, 22 Mich. 266, 269, speaking of compulsory submission, says: "It is the fact of compulsory submission which brings a person into imprisonment; and *impending and threatening physical force, which to all appearances can only be avoided by submission, operates as effectually, if submitted to, as if the arrest had been forcibly accomplished without such submission.*"

On same subject, *Pike vs. Hanson*, 9 N. H. 491; *Crowell vs. Gleason*, 10 Me. 325; *Bloomer vs. State*, 5 10 Sneed (Tenn.) 66; *Smith vs. State*, 7 Humph. 43, 45; *Cooley on Torts, Title, False Imprisonment*, p. 169, 170; *Addison on Torts, same Title*, Sect. 799.

In *Klein vs. C. P. R. R.*, 37 Cal. 400; 39 Cal. 587, at p. 406 of Rept. it was judicially said: "We have no doubt that in such cases a show, or demonstration of force, sufficient to impress a reasonable person with the belief that it will be employed, must be held to be the equivalent of actual force."

In *Brown vs. Memphis & C. R. R. Co.*, 7 Fed. Rep., p. 20 51-65, HAMMOND, *J.*, says on this subject: "Where the passenger is in the wrong he should not resist the conductor when ejecting him, and *right or wrong, resistance will mitigate the damages.*" Further the Court says: "Even where the passenger is right and the conductor is wrong, it is contributory negligence to resist him by *engaging in an unnecessary trial of strength with superior force.*" And in *Hall vs. Memphis & C. R. R. Co.* 9 Fed. Rep. 585, (also Vol. IX. Am. & Eng. R. R. Cases, 30 p. 348,) the same Judge says: "The common notion that force must be invited to secure legal damages against his (the conductor's) unlawful exactions is, in my judgment, erroneous and vicious."

In *Jeffersonville R. R. Co. vs. Rogers*, 38 Ind. 116, the plaintiff left the train under *threats only*, and a verdict of \$1,000 was sustained.

VI., VII. These assignments involve the same legal question—the duty of a passenger who is ejected under the circumstances of this case. The statement of the 40

sixth assignment is erroneous—the demand of the conductor was *for a ticket*. (Test. p. 11, l. 30, *seq.*; p. 12, l. 5, *seq.*; p. 28, l. 5, *seq.*; p. 30, l. 21, *seq.*; p. 31, l. 8, *seq.*) The defendant's witnesses all agree that the conductor only demanded a ticket. (Conductor's testimony, p. 42, l. 33, *seq.*; p. 43, l. 10, *seq.* Brakeman's testimony, p. 54, l. 1, *seq.* They were the only witnesses on behalf of the defendant on the subject.) Had the plaintiff been *rightfully ejected*, or the train stopped for that purpose, because
 10 of his wrongful refusal to pay his fare, a long line of cases hold that he could not, by tendering his fare when he was being put off, or upon re-entry after ejection, acquire a right of passage. *Louisville N. G. So. R. R. Co. vs. Harris*, 9 Lea. (Tenn.) 180, (XVI. Am. and Eng. R. R. Cases, p. 375.) *O'Brien vs. Boston & W. R.*, 15 Gray, 20; *Hilbard vs. N. Y.*, 15 N. Y. 455; *O'Brien vs. N. Y. C. & H. R. R. Co.*, 80 N. Y. 236; *Swan vs. Manchester R. R. Co.*, 132 Mass. 116; *State vs. Campbell*, 3 Vr. 309. *Thompson on Carriers*, p. 340. This doctrine is held to be the consequence of the repudiation of
 20 the contract between the carrier and the passenger, on the part of the passenger. We can see no reason on principle, requiring the passenger when about to be wrongfully ejected, or when wrongfully ejected, to enter into a new contract with the carrier.

A series of cases hold that where a passenger, having paid his fare, is ejected because he refuses to pay again when fare by mistake is demanded by the conductor, he is entitled to damages for his expulsion. *The Pittsburgh Company vs. Hennigh*, 39 Ind. 509; *Toledo Company vs. McDarough*, 53 Ind. 289; *Palmer vs. Railroad*, 3 S. C. 580, (16 Am. Rep. 750); *Hamilton vs. Third Avenue R. R. Company*, 53 N. Y. 25. The necessary result of these cases is, that no such obligation as claimed rests upon the plaintiff. Wherever there seems to be a suggestion of any such obligation it arises from anomalous facts in the case. In *Hall vs. Memphis Company*, *supra*, the Court held that the passenger should have paid the fare demanded. But that was a case in which the
 30 passengers were riding upon tickets void on their face.
 40

The Judge says: "The fact appeared on their face that the contract of the company had expired." And it also appeared that the passenger had plenty of money to pay his fare. But the case is really in support of the charge in this case, for the Judge further says: "This is not the case of a *man with a clear right* and a clean ticket, entitled to ride on that trip and train, and wrongfully ejected, but of *one with a disputed right*, a ticket void on its face, which required further attention from the passenger to make it available, as he was then and there informed by 10 the conductor."

This case also makes *bona fides* and reasonableness the *criteria* of the acts of plaintiff as bearing upon the question of his damages, and regarded the conduct of the plaintiff under the circumstances of the case, as lacking good faith and being unreasonable.

Lake Erie vs. Fixe, 88 Ind., p. 382, is directly in point. ELLIOT J., p. 389 of the report, said: "The charge of the conductor that the appellee was endeavoring to cheat the company by attempting to secure a ride on a false 20 pretence that he had a valid ticket, was such as to humiliate and degrade him. It placed him in a degrading position; to pay fare in response to the conductor's demand was to confess that he was endeavoring to secure a ride by dishonest means, and almost any honest man would subject himself to expulsion before doing an act that would impliedly, if not expressedly, fasten upon him the charge of falsehood, and there was no alternative—either the fare must be paid and the confession made, or the passenger must stand to his word and suffer expulsion 30 from the train."

Jeffersonville R. R. Co. vs. Rogers, 38 Ind. 116, (Vol. 10, Am. R. R. Repts., p. 233,) decides the exact point in the sixth assignment. The fifth request in that case, p. 123 of the report, was: "If the conductor of the train demanded of the plaintiff an illegal or excessive rate of fare, the plaintiff could have paid the same under protest, and could have, in an action against the defendant, recovered from the defendant the amount so paid in 40 excess of the proper amount."

And the Court says: "The plaintiff might have paid the excess demanded of him under protest, and then sued the company and recovered it back. He was not obliged to do so; on the contrary if he had made the proper application for a ticket, and had been unable to procure one without fault on his part, he was entitled to be carried at the ticket rate, and being thus entitled to be carried he had the choice of paying the excess demanded of him, or insisting on his right to be thus
 10 carried, and holding the company responsible in damages for the refusal to thus carry him." A verdict of \$1000 in this case was sustained, *vide V., supra.*

VIII., IX. There was no error in the matters involved in the eighth and ninth assignments. The confusion arises from failure to distinguish between *compensatory* damages and *punitive* or *exemplary* damages. The definition of compensatory damages is now enlarged to include indignity and injury to the feelings in the
 20 class of cases to which the present belongs; such damages are the *natural consequence* of the wrongful act. *Smith vs. P. W. & Ch. R. R.*, 23 Ohio, 10; *Chicago and Alton R. R. Company vs. Flagg*, 43 Ill. 368; *Goddard vs. Railway*, 57 Me. 202; *Quigly vs. C. P. R. R. Company*, 11 Nevada, 375; *Hamilton vs. Third avenue R. R. supra*; *Craker vs. Chicago R. R. Company*, 36 Wis. 657. This rule has been adopted in this State by the Court of Errors and Appeals: *Allen vs. Camden and Philadelphia Company*, 17 Vr. 198.

30 X. There is no error in the matters involved in the tenth assignment. It involves the charge from l. 18, p. 82, and the same questions as the previous assignments, and the authorities cited cover it.

XI. The request upon which this assignment is based was properly not charged.

In *Lake Erie, West. R'wy Co. vs. Fixe*, 88 Ind. 382. (Vol. XI. Am. & Eng. R. R. Cases, p. 109.) Where through mistake of the conductor the wrong end of an excursion ticket had been taken, and on a return trip
 40 the conductor refused to receive the remaining end, and

notwithstanding explanation on the part of the passenger, accused him of attempting to defraud the company and ejected him at night some distance from his destination, on appeal a verdict of \$600 was held not excessive; and the Court said, "One who acts in good faith ought not to be deprived of his rights through the fault of the servant of the carrier who has undertaken to carry him safely. It is the duty of the carrier to provide agents and servants who can and will properly protect the interests of passengers and not by want of skill, 10
lack of knowledge or want of care, take from the passengers rights for which they have contracted and paid."

The case of *Hamilton vs. Third Ave. R. R. Co.*, *supra*, is conclusive on the point involved; it decides that a railroad company "is liable for a wrongful ejection, although the conductor acted in good faith, believing that the plaintiff had not paid his fare, and had no right to a passage unless he paid the fare demanded of him." That case, with the others cited *supra*, establish the rule of damages under the state of facts in this case to be 20
compensation, including therein indignity and injury to the feelings.

XII. The request upon which this assignment is based grows out of the confusion as to the meaning of the terms *compensatory* and *punitive*, as applied to the question of damages. The request was clearly wrong under the cases above cited, and the charge strictly correct, p. 84, l. 20, *seq.* All the exceptions were signed and sealed, subject to any qualifications contained in the charge as delivered, p. 91, l. 10. 30

XIII. The request upon which this assignment is based, was clearly wrong. The plaintiff, a reputable manufacturer, p. 7, l. 34, was wrongfully compelled by the repeated command and threatening attitude of the conductor, to leave the train on which he was entitled to ride, about midnight, under a charge of attempting to defraud the company, made in the presence of at least three persons who knew him and witnessed the ejection. The treatment received by the plaintiff from the conduc- 40

tor was an *insult*, the complete synonym of *indignity*, (Stormonth.) The testimony for both plaintiff and defendant, show that the conductor ejected the plaintiff upon the ground that he was attempting to defraud the company; and the case was defended upon the ground of justification, and there is no suggestion in the evidence for the defendant of mere mistake.

10 See on this question of indignity, the judicial language from *Lake Erie and Western Railway Company vs. Fixe*, under VI. and VII.

XIV. The action was properly made trespass. The conduct of the conductor was an assault, (cases cited under V. *supra*,) and trespass is a proper form of action for an assault. (1 *Chitty*, 167; 15th Am. Ed.) That trespass lies against a corporation for the wrongful acts of its employee done in the course of his employment, is settled by a long line of authorities, and in this State in *Brokaw vs. The N. J. R. R. Co.*, 3 Vr. 328; *Allen vs. Camden & Pa. Co.*, *supra*, was an action in trespass.
 20 The act of the conductor was within the scope of his employment. Case, p. 37. *O'Brien vs. Boston & Worcester Co.*, 15 Gray, 20, holds "that a conductor represents the company, and they are liable if he wrongfully ejects a passenger."

Leave to amend was granted if necessary. If the amendment was improper, a further amendment to accomplish justice between the parties will be allowed at this stage of the cause.

30 *Price vs. N. J. R. & T. Co.*, 2 Vr. 229.

The defendant in error respectfully submits that no error has been committed in the matters of which the plaintiff in error complains.

EDWARD M. COLIE,
Attorney of Defendant in Error.

NEW JERSEY, ss.

[L.S.] The State of New Jersey to David
 A. Depue, Esquire, Judge of our
 Circuit Court at Newark, in and for
 the County of Essex, or such Jus-
 tice of the Supreme Court of the
 State of New Jersey as shall hold
 such Circuit Court, greeting.

Because in the record and proceedings, and also ¹⁰
in the giving of judgment in a plaint, which was in
our Circuit Court, holden at Newark, in and for the
said County of Essex, between John F. Walsh, plain-
tiff, and The Delaware, Lackawanna & Western Rail
Road Company, defendant, of a plea of trespass on
the case, manifest error hath intervened to the great
damage of the said The Delaware, Lackawanna &
Western Rail Road Company, as by their complaint
we are informed, we being willing that speedy jus-
tice should be done to the parties aforesaid in this ²⁰
behalf, do command you distinctly and openly to
send under your seal the record and proceedings
aforesaid, with all things touching and concerning
the same, to our Justices of our Supreme Court of
the State of New Jersey, on the thirteenth day of
March next, together with this writ, that the record
and proceedings aforesaid being inspected, we may
further cause to be done thereupon, what of right
and according to the law ought to be done.

30

Witness, Mercer Beasley, Esquire, our Chief Jus-
tice, at Trenton aforesaid, the eleventh day of Febru-
ary, A. D. eighteen hundred and eighty-five.

BENJ. F. LEE,

Clerk.

BEDLE, MUIRHEID & MCGEE,

Attys.

40

ESSEX COUNTY, ss.

The answer of David A. Depue, Esquire, one of the Judges of the Circuit Court within named, the record and proceedings of the plaint whereof mention is within named, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey at Trenton at the day and year within contained in a certain schedule to this writ annexed, as I am commanded.

10 DAVID A. DEPUE,
Judge.

[Endorsed.]

NEW JERSEY SUPREME COURT.

20	THE DELEWARE, LACKAWANNA & WESTERN RAIL ROAD COMPANY, Pltff. in Error,	}	Writ of Error to Essex Circuit Court
	vs.		
	JOHN A. WALSH, Deft. in Error.	}	

Returnable March 13, 1885.

30 BEDLE, MUIRHEID & MCGEE,
Attys of Pltff. in Error.

The within writ was presented to me and it is ordered that the Clerk prepare return thereto according to law.

Feb. 16, 1885.

DAVID A. DEPUE, J.

Pleas before the Judge of the Circuit Court holden at Newark in and for the County of Essex, of the thirteenth day of August, A. D. eighteen hundred and eighty-four.

J. WARREN VANDERVEER,
Clerk.

ESSEX COUNTY, ss.

10

The Delaware, Lackawanna & Western Rail Road Company are summoned to answer unto John F. Walsh, the plaintiff therein, of a plea of trespass on the case, and thereupon the said John F. Walsh by Samuel Kalisch, his attorney complains :

For that whereas, the said defendants before and at the time of the committing of the grievances hereinafter next mentioned were the owners and proprietors of a certain railroad cars going and passing from the City of Newark in the County of Essex aforesaid, to a certain other place, to wit, the City of Orange, in the County of Essex aforesaid, for the carriage and conveyance therein of passengers and their baggage for a certain reasonable hire and reward to the said defendants in that behalf, to wit, at the said City of Newark. And whereas also, whilst the said defendants were such owners and proprietors, to wit, on the tenth day of May, in the year eighteen hundred and eighty-four, to wit, at the said City of Newark, 30 they, the said defendants received into their said cars the said plaintiff as a passenger, to be conveyed and carried by said cars from the said City of Newark to the said City of Orange, and then, to wit, at Orange aforesaid, safely and securely to be conveyed and carried at and for a certain reasonable hire and reward in that behalf. Yet the said defendants, not regarding their duty in that behalf, but contriving and fraudulently intending, craftily and subtly to deceive, defraud and injure the said plaintiff in that be- 40

half, did not, nor would carry and convey the said plaintiff to the said City of Orange, but on the contrary thereof, they, the said defendants, by their servants refused to carry the said plaintiff to the said City of Orange; and at a place called Grove street, in the said County of Essex, forcibly and with great violence, ejected said plaintiff from the cars aforesaid, by means whereof the said plaintiff was greatly delayed and hindered in reaching the said City of
 10 Orange, whereby he was deprived of great gains, profits and advantages, and was compelled to lay out and expend the sum of two dollars to be conveyed from the said Grove street to the said City of Orange, and was and is by means of the premises otherwise greatly injured and damnified, to wit, at Newark, in the County of Essex aforesaid.

Wherefore the said plaintiff says that he is injured and hath sustained damage to the amount of three thousand dollars, and therefore he brings his suit,
 20 &c.

SAMUEL KALISCH,
 Attorney for Plaintiff.

30 And the said defendants, by Bedle, Muirheid & McGee, their attorneys, come and defend the wrong and injury, when, &c., and say that they are not guilty of the said supposed grievances above laid to their charge or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them, and of this they the said defendants put themselves upon the country, &c.

BEDLE, MUIRHEID & MCGEE,
 Attorneys of Defendants.

Therefore let a jury thereupon come before the Judge aforesaid, at Newark aforesaid, the first Tuesday of December next, who neither, &c., to recognize, &c., because, &c., and the same day is given to the parties here, &c.

At which time before the Judge aforesaid at Newark aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the sheriff hath not sent here the writ to him in this behalf directed, nor hath he done anything thereupon. 10

And now at this day, that is to say, the fourteenth day of January, A. D. eighteen hundred and eighty-five, until which day the issue as aforesaid joined had been continued before the Judge aforesaid at Newark aforesaid, came the parties aforesaid by their attorneys aforesaid, and the jurors of the jury of whom mention is before made, being summoned also come, who to speak the truth of the matter within contained, being chosen, tried and sworn upon their oath say they find for the plaintiff and assess his damages against the defendants at the sum of five hundred dollars, and so they say all. 20

Whereupon it is considered that the said plaintiff do recover against the said defendants his damages in form aforesaid found, and also the sum of fifty-five dollars and fifty-three cents, as for his costs and charges by him about his suit in this behalf expended by the Court now here adjudged to him of increase with his assent.

Which damages, costs, and charges in the whole amount to five hundred and fifty-five dollars and fifty-three cents. 30

And the said defendant in mercy, &c.

Judgment signed January 14th, 1885.

DAVID A. DEPUE, J.

[Endorsed.]

NEW JERSEY SUPREME COURT.

THE DELAWARE, LACKAWANNA & WEST-
ERN RAILROAD COMPANY,
Pltff. in Error,

vs.

JOHN F. WALSH,
Deft. in Error.

Return to
Writ of Error

10

Returnable March 13, 1885.

BEDLE, MUIRHEID & MCGEE,
Attys. of Pltff. in Error.

20

Be it remembered that on this thirteenth day of January, eighteen hundred and eighty-five, at the Circuit Court of the County of Essex, before his Honor David A. Depue, Esquire, Judge of said Court, the issues joined in the above cause between the parties *pro ut* the pleadings, came on to be tried before a jury duly empanelled, whereupon the said 30 John F. Walsh, plaintiff in said suit, to maintain the issues on his part to be maintained offered the following evidence.

40

ESSEX COUNTY CIRCUIT COURT.

DECEMBER TERM, 1884.

JOHN F. WALSH, vs THE DELAWARE, LACKAWANNA & WEST- ERN R. R. Co.	}	In Case. 10
---	---	-------------

Appearances—

Mr. E. M. COLIE for the plaintiff.

Messrs. BEDLE, MUIRHEID & MCGEE for defendants.

Plaintiff's counsel opened for the plaintiff. 20

JOHN F. WALSH, plaintiff, sworn in his own behalf :

Direct examination by plaintiff's counsel :

Q. You are a resident of East Orange ?

A. Yes, sir.

Q. How long have you resided there ?

A. In East Orange ?

Q. Yes ; or in that vicinity ?

30

A. About ten years.

Q. What is your occupation ?

A. Harness-maker.

Q. Do you work for some one else or are you the proprietor of a harness making establishment ?

A. I am the proprietor.

Q. Now on the 10th day of May last were you in the City of Newark—on the night of the 10th day of May ?

A. Yes, sir.

40

By plaintiff's counsel. It is agreed between Mr. McGee and myself that the Delaware, Lackawanna & Western Rail Road Company lease the Morris & Essex branch, and operate that branch from Hoboken to Phillipsburg.

Q. On that evening did you go to the ticket office of the Delaware, Lackawanna & Western Railroad at Newark to purchase a ticket?

A. Yes, sir.

10 Q. What ticket did you purchase?

A. A ticket to Orange.

Q. How much did you pay for it?

A. Twelve c.—two cents and a ten cent piece.

Q. Do you know the name of the ticket agent who gave it to you?

A. I didn't at that time; I do now.

Q. What is it?

A. Lewis Day.

Q. (By the COURT.) You called for a ticket and
20 got it?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Further direct:

Q. Did you see it?

A. Yes, sir.

Q. What did it say?

A. To Orange.

30 Q. What train did you take?

A. It used to be a quarter of twelve, they have changed the time; I think it is 11.38.

Q. You don't recollect the exact hour that it left Newark?

A. The hour—yes.

Q. The minute, I mean to say—whether it was 11.45 or 11.48?

A. No, sir.

Q. (By the COURT.) Was it a train that stopped at Orange?

A. Yes, sir.

Further direct :

Q. Did you get aboard that train when it came along?

A. Yes, sir.

Q. Whereabouts on the train did you board it?

A. The front platform of the car next to the 10 smoker.

Q. To your recollection how many cars were there on that train, including the smoker?

A. I couldn't say ; I think there were two besides the smoker.

Q. And you got aboard the train—(interrupted.)

A. On the hind platform.

Q. Of the first passenger coach next to the smoker?

A. Yes, sir.

20

Q. Now, where did you go from there?

A. I went in that car to see if I could get a seat ; I walked through the car and couldn't get a seat ; there were quite a number of passengers standing up, and I passed through to the smoker and seen that that was full, so I went back to the front platform of the car behind the smoker.

Q. You took your place on the front platform of the first car after the smoker?

A. Yes, sir.

30

Q. On which side; on the left hand side going up?

A. On the north side going up from Newark.

Q. Were there any other persons on the platform?

A. Yes, quite a number.

Q. How many?

A. I couldn't tell you exactly how many there were.

Q. Were there a half a dozen, do you think?

A. I think there was five or six, something like that.

40

Q. Did you know any of them ?

A. Yes, sir.

Q. How many of those five or six persons did you know ?

A. Well, I seen Bailey Lloyd, Mr. John Lloyd, and I think Mr. Charles Ryno.

Q. Were there others whom you didn't know ?

A. Yes, sir.

10 Q. Now when you took your place on this platform did you stand up or sit down ?

A. I stood up for a ways, and then I felt kind of tired and then I sat down.

Q. (By the COURT.) Where did you sit down ; on the platform ?

A. On the first step of the platform.

Further direct :

Q. That is on the platform with your feet down on the first step ?

20 A. Yes, sir.

Q. Did you have a package with you, anything of that kind ?

A. Yes, sir ; I had a pair of pants and a vest, I had been down to Newark to buy.

Q. What did you do with this ticket that you bought at Newark ?

A. I held the ticket in my hand from the time I bought it until I handed it to the conductor.

Q. Did you hand it to the conductor.

30 A. Yes, sir.

Q. Whereabouts about ?

A. I couldn't say exactly, somewheres near the canal bridge, I suppose.

Q. (By the COURT.) When he came through and asked for it ?

A. Yes, sir ; he came around and said " tickets."

Further direct :

Q. He took it ?

40 A. Yes, sir.

Q. Did you see whether he took other tickets on the platform at the same time?

A. No, sir, I didn't take any notice.

Q. The first station out of Orange is Roseville, is it not?

A. Yes, sir.

Q. The next station is the station now called Grove street?

A. Yes, sir.

Q. And the next station is the station called East 10 Orange.

A. Yes, sir.

Q. And the next station is Brick Church, at which you were going to get out?

A. Yes, sir.

Q. What next happened, what was said between you and any employee of the company?

A. When we got to Roseville, the brakeman said "Roseville;" I said "I know it;" he said "the conductor said your ticket is for Roseville." So he went away, and when we got near the Grove street station—(interrupted.)

Q. How near?

A. I guess we was at the station.

Q. Had the train stopped?

A. The train was at a dead stop.

Q. Well?

A. The conductor come along and went up on the platform of the smoking car.

Q. Did he come through the passenger coach? 30

A. Yes, sir; he came through the passenger coach and came up on the platform of the smoker; says he, "Your ticket;" I said, "I gave you my ticket;" he says, "You gave me a ticket for Roseville;" I said, "No, sir, I gave you a ticket for Orange;" he said, "You will have to give me another ticket or get off the car;" I got up from where I was sitting and said, "I gave you a ticket for Orange," he says, "Get off the car."

Q. Where was he standing when he said this? 40

A. On the hind platform of the smoker.

Q. That was directly in front of you? that is the two platforms face each other, and you were on the passenger platform?

A. I said "I can prove by the ticket agent at Newark, that I bought my ticket of, that I paid him 12 cents for my ticket, which entitles me to go to Orange," he came over on the platform where I was and says to me "if you don't get off this car I will
10 put you off;" I said "you can put me off the car if you choose, but you or the company you represent, will pay for it." He said "You get off the car," so I got off the car, and he followed me up like and bid me good night and I said "good night, I will see you later."

Q. How did he bid you good night?

A. I thought it was a slur; under the circumstances I think it was.

Q. At East Orange, where you were put off this
20 car, is there any conveyance or livery stable, or anything of that kind?

A. No, sir, not as I know of.

Q. Now, Mr. Walsh, you say there is no livery stable at East Orange?

A. At Grove street.

Q. Now about what time would you think it was when you reached East Orange that night—how near to midnight?

A. It was very near twelve o'clock; I couldn't say
30 exactly how near.

Q. And you walked which way to go home?

A. I walked through Grove street to Main, and I wanted to go and see if the ticket agent would recognize me; it was late then, and I walked down Main street a ways, about fifty feet, and I thought to myself, the place would be shut up—the ticket office would be shut up by the time I got there so I started on up home.

Q. Did you walk all the way home?

40 A. Yes, sir.

Q. (By the COURT.) How far was it?

A. I should judge about three-quarters of a mile.

Further direct :

Q. Your first impulse was to go to Newark and see the ticket agent and see if he would recognize you?

A. Yes, sir.

Q. And then you reconsidered that and thought you would go home?

A. Yes, sir; I thought the ticket office would be 10 shut up by the time I got down there and I would have my walk for nothing.

Q. You say that you knew several of these persons that were on the platform with you?

A. Yes, sir.

Q. And there were a number there you didn't know?

A. Well, I couldn't say as to that.

Q. There were a number there you didn't know?

A. Yes, I suppose so.

Q. (By the COURT.) What sort of a night was it? 20

A. A clear night.

Cross-examination by defendant's counsel :

Q. How near to Grove street is there a livery stable?

A. I don't know; I never measured. Coyne's livery stable is at the next station; I don't know of any other down there.

Q. How near is that—that is East Orange, isn't it?

A. Yes; I don't know exactly. 30

Q. About a quarter of a mile?

A. I should judge about a quarter of a mile, possibly over.

Q. All these stations are right in the city, aren't they?

A. What city?

Q. Well in the two cities, Orange and Newark?

A. There is Orange and East Orange and Newark.

Q. Well, isn't it all built up, almost like a city the whole way? 40

- A. Yes, it is pretty well built up.
- Q. Didn't you know that there was another train due after that one you were on?
- A. I didn't think anything about the trains.
- Q. You didn't stop to inquire about that?
- A. No, sir.
- Q. You didn't go to the station of Grove street to ask?
- A. I don't think there was anybody there to ask.
- 10 Q. Did you go into look?
- A. No, sir, I didn't.
- Q. You didn't?
- A. No, sir.
- Q. There was a time table at the depot, wasn't there?
- A. I think at that time of time of night—I don't know whether that place is open or not.
- Q. Haven't you perceived that there is a time table of trains posted up on every depot of the road?
- 20 A. Yes, sir.
- Q. You didn't go in to find out whether there was any later trains or not?
- A. No, sir.
- Q. How near were you to the horse cars?
- A. Where I was put off?
- Q. Yes, sir; the horsecar line—the track?
- A. About fifty yards, I should think.
- Q. Now don't you know that there were two horse-cars went to Orange that night after that hour?
- 30 A. I didn't think anything about them.
- Q. You didn't think of them?
- A. No, sir; I thought I had a right to ride where I paid my fare.
- Q. Yes; I don't mean to discuss your right, we admit that to start with; you had a ticket and gave it up, all right. Now you say you left the Newark depot about what hour?
- A. To go to Orange you mean?
- Q. Yes.
- 40 A. I think it was the quarter to twelve o'clock

car ; I think it was, they changed the time, we used to call it the quarter to twelve car, or 11.45.

Q. Now as you think of it you recollect there were two horse cars left Market street depot, late enough to pass that point after that hour.

A. I don't think anything about it.

Q. Do you know now it was so ?

A. Well, I think it was so.

Q. It was, yes, you do know ; can't you remember the names of other men that were on the platform 10 with you besides those you have given us ?

A. Bailey Lloyd, John Lloyd and Charley Ryno.

Q. Those you have given us ; now can't you remember some other names ?

A. Selden Walker.

Q. What other name ?

A. I couldn't give you any other name, I didn't take any particular notice of them on the platform.

Q. Haven't you since ascertained the names of the 20 others—I would like very much to know them ?

A. I know Bailey Lloyd and John Lloyd was there, the others I found out since, was there.

Q. You have told us about Bailey Lloyd and John Lloyd and Selden Walker and one other man. Now, I would like to know the others if you know them ?

A. (Not answered.)

Q. (By the COURT.) Have you told all you know?

A. Yes, sir.

30

Further cross :

Q. Now, Mr. Walsh, isn't it a fact that when the conductor came to you all he said was that you had a Roseville ticket and you will have to get off there ?

A. No, sir.

Q. And didn't you get off without making any reply ?

A. No, sir, nothing of the kind.

Q. Isn't that the fact ?

A. Nothing of the kind ; he ordered me off of the car four times.

40

Q. He didn't touch you?

A. No, sir, but he came as though he was going to hit me.

Q. But he didn't?

A. No, sir.

Q. It was at the Grove street station, was it?

A. Yes, sir.

Q. What color was your ticket?

A. It was a white ticket with black letters.

10 Q. (By the COURT.) All in white with black letters?

A. Yes, sir.

Further cross :

Q. What do the horse cars charge for the fare from Grove street to Orange?

A. I couldn't tell you what they charge.

Q. Haven't you ridden it?

A. No, sir, I never paid my fare from Orange to
20 Grove street.

Q. Do you know what is the largest charge they have on that horse car road for any ride?

A. Ten cents from Newark to Orange.

Re-direct examination by plaintiff's counsel :

Q. Do you know, or do you not know, before this eleven o'clock train from Newark reaches any of these stations, Roseville, Grove street, East Orange, and Brick church, all of those stations are closed up;
30 what is your knowledge on that subject?

A. I think they are closed.

Q. Now, on your way home that night as you walked up, did any horse car from Newark meet you?

A. No, sir, I didn't see any.

Q. You walked on the same street the track was on, did you not?

A. Yes, sir.

Q. Now is it not also a fact within your knowl-
40 edge that the horse cars at that time of night run very infrequently—far apart?

A. That I couldn't say—yes, they do, they don't run very often at that time of night?

A. They do not run, you know that, very often at that time of night?

A. No, sir.

Q. Do you know whether—Coyne's livery stable is fully half way to your place, is it not?

(Objected to.)

Q. (By the Court.) Where is the livery stable?

A. (Not answered.)

10

Further re-direct :

Q. What proportion of the distance from Grove street to your home would you say Coyne's livery stable was ; half way or more ?

A. About half way.

Q. (By the COURT.) Then your house is only half a mile from the depot?

A. It is about three-quarters of a mile.

20

Further re-direct :

Q. You don't know whether Coyne's livery stable is open at that time of night or not, do you ?

A. I couldn't say.

BENJAMIN R. SAGE, Jr., a witness produced on behalf of the plaintiff having been duly sworn, testified as follows :

30

Direct examination by plaintiff's counsel.

Q. Where do you live ?

A. I live at Newark now.

Q. Where did you live the 10th of May last ?

A. East Orange.

Q. On the night of the 10th of May did you at any time see Mr. Walsh ?

A. Yes, sir.

Q. Whereabouts did you see him ?

40

A. At the Delaware, Lackwanna and Western Rail Road depot, at the ticket office.

Q. In Newark?

A. Yes, sir,

Q. What night in the week was that—the 10th of May.

A. Saturday night.

Q. About what time, on that Saturday night, did you see Mr. Walsh there?

10 A. I guess it was about twenty minutes of twelve, he was waiting for the 11.48 train.

Q. Were you waiting for the same train?

A. Yes, sir.

Q. Now, what did you see Mr. Walsh do that night?

A. I stood at the ticket office talking to Mr. Day.

Q. Mr. Day is who?

A. The ticket agent.

Q. All right.

20 A. Mr. Walsh came up and bought an Orange ticket and gave him a ten cent piece and two pennies, and Mr. Day gave him an Orange ticket.

Q. Did you see the ticket?

A. Yes, sir, I saw the ticket.

Q. How did you come to see it?

A. Mr. Day threw it out right before my face.

Q. Was there a shelf on which they lay out the ticket and change?

A. Yes, sir.

30 Q. You saw the ticket?

A. Yes, sir.

Q. And you saw the money he paid?

A. Yes, sir.

Q. (By defendant's counsel.) Did you go up on that train?

A. Yes, sir.

Q. Where did you get aboard it?

A. I couldn't tell you; it was so long ago; I forget what car.

40 Q. Do you recollect the condition of the train as to passengers?

A. No, sir, I do not.

Q. Was it crowded or not?

A. I couldn't tell you.

WILLIAM OLIVER, a witness produced on behalf of the plaintiff, having been duly sworn, testified as follows :

Direct examination by plaintiff's counsel : 10

Q. Where do you live?

A. Orange.

Q. What is your employment?

A. Post office clerk.

Q. At Brick Church?

A. Brick Church, yes, sir.

Q. On the 10th day of May last, at any time in the day or evening did you see Mr. Walsh?

A. Yes, sir.

Q. Whereabouts did you see him? 20

A. I saw him at the ticket office in Newark.

Q. How did you come to be there?

A. I was there with Mr. Sage talking to the ticket agent.

Q. That is this man Day?

A. Yes, sir.

Q. What did you see happen?

A. I saw Mr. Walsh come up to buy a ticket and he gave him a ten cent piece and two pennies, or a ten cent piece and a two cent piece, I forget³⁰ which.

Q. What did he get?

A. A ticket for Orange; Mr. Day threw out the ticket to him.

Q. What did you see?

A. I saw "Orange" in big letters; that is all I seen of it.

Q. (By the COURT.) It was an Orange ticket then?

A. Yes, sir.

Further direct:

Q. Have you seen Mr. Walsh many times?

A. Only since I have been employed in the Post Office.

Q. Is his place in that neighborhood?

A. Yes, sir.

Q. And you see him nearly every day?

A. Yes, sir.

Q. Was there any conversation that brought this
10 thing particularly to your attention that night?

A. No, sir.

Q. Nothing occurred between Mr. Walsh and this man Day?

A. No, sir, after Mr. Walsh went out Mr. Day asked if he was not connected with the East Orange Fire Department.

Q. What did you say to that?

A. I said he was.

Q. Does that serve to fix this thing in you mind?

20 A. Yes, sir.

(Objected to.)

Q. (By the COURT.) Have you any doubt about its being the 10th of May?

A. Well, I couldn't say what day it was.

Further direct:

Q. It was Saturday night?

30 A. Yes, sir.

Q. Did you get aboard this train?

A. Yes, sir.

Q. Where did you get aboard it?

A. In the smoking car.

Q. How did you find it?

A. Next the engine.

Q. How did you find it; in what condition as to passengers; was it full of passengers?

A. I think there was a good many passengers, yes,
40 sir.

Q. You are not connected with Mr. Day in any way?

A. No, sir.

Cross-examination by defendant's counsel :

Q. To what place did you buy a ticket?

A. To Brick Church.

Q. What kind of a ticket did you buy?

A. I bought a return ticket.

Q. (By the COURT.) This train stopped at Brick 10 Church, did it, that you went up in?

A. Yes, sir.

Re-direct examination :

Q. What train was this, 11.43?

A. I believe it was.

Q. 11.43 or 11.48, according to the time being changed or not?

A. Yes, sir.

Q. Is it your custom to buy a ticket to Orange or 20 Brick Church, indifferently?

A. Not answered.

Q. (By the COURT.) Are the tickets that are used to Brick Church, Orange tickets or tickets that are marked Brick Church?

A. They are marked Brick Church.

Re-cross :

Q. What did you pay for your ticket?

A. Twenty cents. 30

Q. What kind of money did you give?

A. Two ten cent pieces.

Q. Have you bought any tickets since?

A. Oh, yes.

Q. How soon after that did you buy a ticket?

A. I can't exactly remember the date.

Q. What kind of money did you give that time?

A. I can't remember.

Q. Now, the second time afterwards, what kind of a ticket did you buy? 40

A. I can't remember.

Q. What kind of money did you pay?

A. I can't remember.

Q. Isn't it funny that you happen to remember just the money that you gave, and that Walsh gave that night? how do you happen to remember what money you gave?

A. I think I remember I had plenty of change that night.

10 Q. Do you really remember that you gave two ten cent pieces, or do you just think it likely?

A. I remember that I did give two ten cent pieces?

Q. Can you remember any other time from then to now, what money you gave?

A. No, sir.

Q. Can you remember any time before that what money you gave?

A. No, sir.

20 Q. You saw Mr. Sage buy his ticket too, didn't you?

A. I don't know whether I met Mr. Sage on the train at East Orange or whether he—(interrupted.)

Q. You say Mr. Sage and you were standing together at the ticket office?

A. Yes, sir.

Q. Now I ask, did Mr. Sage buy a ticket?

A. I couldn't say.

Q. You don't remember whether he did or not?

A. No, sir.

30 Q. And yet you do have a most vivid recollection of this affair? How many times has Mr. Walsh talked to you about this case recently?

A. I think he came over Monday morning and told me about it.

Q. Did you remember just what he paid for his ticket until he told you, or did he call your attention to it?

A. No, sir, I remember what he gave.

40 Q. I ask you if you remembered it before he spoke to you about it?

A. Before Mr. Walsh spoke about it?

Q. Yes, sir.

A. No, I didn't think anything about it then.

Q. When Mr. Walsh first spoke to you about the case what did he say?

A. He asked me if I remembered seeing him at the Newark station, I said, "yes, I did" and he asked me what kind of money he gave and I told him a ten cent piece and two pennies.

Q. You said that to him right away? 10

A. Yes, sir.

Q. Without his telling you?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Well, you can't remember any other night, what you paid or anybody else paid. That is all.

Adjourned to the 14th day of January, 1885 at ten o'clock A. M. 20

JANUARY 14th, 1885.

Continuation of examination pursuant to adjournment.

LEWIS DAY, a witness produced on behalf of the 30 plaintiff, having been duly sworn, testifies as follows:

Direct examination by plaintiff's counsel.

Q. You are in the employ of the Delaware, Lackawanna & Western Rail Road Company?

A. Yes, sir.

Q. And you are their ticket agent?

A. At night.

Q. At Newark?

A. Yes, sir. 40

Q. Did you ever see the plaintiff, John Walsh?

A. Yes, sir.

Q. Do you recollect any particular time that you saw him?

A. One Saturday night he came into the depot.

Q. That was about May 10th, wasn't it?

A. Well, I don't know, somewheres about there.

Q. (By the COURT.) Was it the same time spoken of by Mr. Oliver and Mr. Sage?

10 A. Yes, sir.

Further direct :

Q. Did you sell Mr. Walsh a ticket that night?

A. Yes, sir.

Q. To what point?

A. Newark to Orange.

Q. He paid for it?

A. Paid me for it.

20 *Cross-examination by defendants' counsel :*

Q. How do you know it was the night of the 10th of May?

A. Well, I didn't know it was that night; I said it was near that.

Q. What do you say?

A. I don't know the date.

Q. Then you don't really know whether it was the night he means or some other night, do you?

30 A. Well I—(interrupted.)

Q. You recollect that on a Saturday night you sold him a ticket to Orange?

A. Yes, sir.

Q. That is all isn't it?

A. On a Saturday night.

Re-direct examination by plaintiff's counsel :

Q. You recollect very well that it was the night that Mr. Sage and Mr. Oliver stood talking at the 40 window of that ticket stand of yours?

A. Yes, sir.

Q. Do you recollect any question asked in reference to who Mr. Walsh was, or answered by any of the three?

(Objected to by defendant's counsel.)

By the COURT. I think that is competent for the purpose of identifying the night.

Q. (By the COURT.) Do you remember any conversation that evening as to who Mr. Walsh was? 10

A. After he had bought the ticket, one of the gentlemen, I don't know which one, asked me if I knew who he was, I said "no;" he said, "his name is Walsh, and he used to be with the East Orange Fire Department."

Further re-direct :

Do you recollect any other night when those two gentlemen and Mr. Walsh were present at the ticket 20 office?

A. Not that I know of.

Q. Only once you recollect any such gathering as you three and Mr. Walsh?

A. That is all I remember.

BAILEY LLOYD, a witness produced on behalf of the plaintiff having been duly sworn, testified as follows: 30

Direct examination by plaintiff's counsel,

Q Where do you live?

A. East Orange.

Q. What is your occupation?

A. Mason.

Q. How long have you lived there?

A. All my life.

Q. Do you know Mr. Walsh by sight?

A. Yes, sir.

Q. Do you recollect any night in the spring, the early part of this year, being a passenger with him?

A. Yes, sir.

Q. On the Delaware, Lackawanna & Western Rail Road?

A. Yes, sir.

Q. Can you state when it was?

A. On a Saturday night.

Q. And on what train?

10 A. On the 11.48.

Q. From Newark?

A. Yes, sir.

Q. Did that train stop at Brick Church?

A. Yes, sir.

Q. An accomodation train?

A. Yes, sir.

Q. Now did you go up on that train?

A. Yes, sir.

Q. Where did you get aboard of it?

20 A. At Newark.

Q. Whereabouts on the train did you get aboard—what car?

A. The smoking car.

Q. What did you find the condition of the smoking car?

A. Very full.

Q. Do you mean more than the seats full?

Q. Yes, sir; standing up they were?

Q. Where did you go?

30 A. I stood out on the platform.

Q. Who else, that you knew, stood on the platform?

A. Charley Ryno, John Lloyd, and Selden Walker.

Q. Were there others besides, whom you didn't know?

A. Mr. Walsh was there.

Q. Others besides Mr. Walsh—strangers?

A. Some more, but I didn't know them.

Q. Was the platform quite crowded?

40 A. Yes, sir.

Q. Where did you stand with reference to Mr. Walsh, on this platform?

A. I stood on the hind platform of the smoking car and he was on the front platform of the car following; I stood on the hind platform of the smoking car and he stood on the front platform of the other car; he stood on the north side and I was on the north side too.

Q. Was your attention attracted in any way to Mr. Walsh that night? 10

A. It was at Grove street.

Q. By the way, you had a ticket to what point?

A. East Orange.

Q. Between what stations was your ticket given up?

A. Between Roseville and Orange.

Q. Who took it?

A. Mr. Reed, the conductor.

Q. Did he collect the tickets on that platform?

A. Yes, sir; I think he did. 20

Q. Now you say that your attention was called to Mr. Walsh at Grove street station?

A. Yes, sir.

Q. What attracted your attention to Mr. Walsh at Grove street station?

A. I heard the conductor tell him he gave him a Roseville ticket.

Q. Where was the conductor when he said that?

A. Standing right alongside of Mr. Walsh.

Q. (By the COURT.) Where was that at? 30

A. At Grove street station.

Q. That was not when the tickets were taken up then?

A. No, sir.

Further direct:

Q. Now what conversation did you hear and what did you see take place between Mr. Walsh and this conductor?

A. The conductor told Mr. Walsh he gave him a 40

Roseville ticket, and Mr. Walsh says, "I didn't, I gave you an Orange ticket," and he says, "You will have to give me another ticket or get off the train."

Q. The conductor said that?

A. Mr. Walsh said, "I gave you an Orange ticket and you took it up;" he says, "You will have to give me another ticket or get off, come, come, get off or give me another ticket," and Mr. Walsh got off.

10 Q. Do you know how many times the order to get off was repeated?

A. No, sir; I don't, two or three times.

Q. Where was the conductor, with reference to Mr. Walsh, when he told him to get off last?

A. Right alongside of him.

Q. (By defendant's counsel.) He stood right alongside of him all the time?

A. While this conversation was going on.

Further direct :

20 Q. Did he follow him off?

(Objected to as leading.)

Q. (By the COURT.) Where was the conductor standing on the platform?

A. After Mr. Walsh got off he got off behind Mr. Walsh.

Further direct :

Q. Then what did he do?

A. Got on the train and started the train.

30 Q. Did he stand directly in front of the platform or did he walk down?

A. I couldn't say.

Not cross-examined.

Q. (By the COURT.) Did any other passengers get off at that station?

A. Yes, sir.

Q. At East Orange?

A. Not as I know of, I couldn't say.

Q. Not on that end of the car?

40 A. No, sir, not as I know of.

JOHN LLOYD, a witness produced on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination by plaintiff's counsel:

Q. Where do you live?

A. East Orange.

Q. Do you know the plaintiff here by sight?

A. Yes, sir.

Q. Do you recollect any occasion when you were 10 a fellow passenger with him on the Delaware, Lackawanna & Western Rail Road the early part of this year?

A. Yes, sir.

Q. Do you recollect what night of the week it was?

A. Saturday night, I believe.

Q. Well, are not you sure?

A. Yes, sir, I am quite sure of that.

Q. What train was you on?

20

A. I don't know whether it was the 11.48 or 11.33.

Q. It is the train that now leaves Newark at what time?

A. 11.48 I believe.

Q. Where did you get aboard the train?

A. On the rear platform of the smoker.

Q. In what condition did you find the train?

A. Very crowded.

Q. And where did you take your place?

A. Well, I was standing up against the iron rail- 30 ing on the rear of the smoker that runs around, that the brake is on.

Q. You were facing the engine?

Q. No, sir; I was facing the front platform of the second car.

Q. You had your back towards the engine?

A. Yes, sir.

Q. On which side?

A. The north side.

Q. At what point was your attention called to Mr. 40 Walsh, if it was called to him at all that evening?

A. At East Orange—that is Grove street now.

Q. Now, by what was your attention called to Mr. Walsh?

A. By the conductor coming through the car and wanting another ticket of Mr. Walsh.

Q. Through what car did the conductor come?

A. I don't remember now.

Q. You don't remember whether he came through the smoker?

10 A. No, sir.

Q. Where did he stop when he asked Mr. Walsh for a ticket?

A. On the platform of the smoker.

Q. Near you?

A. Yes, sir.

Q. How with relation to Mr. Walsh: where was Mr. Walsh?

A. On the front platform of the second car.

Q. Then the conductor was opposite him?

20 A. Well, he was not opposite, because Mr. Walsh was sitting like this, and the conductor was there; he was alongside of him.

Q. But he was on the other platform?

A. He was on the other platform.

Q. State what took place?

A. Mr. Reed said, "Tickets;" Mr. Walsh says, "I gave you my ticket;" Mr. Ried said, "Yes, you gave me a ticket for Roseville;" Oh, no," he says, "I gave you a ticket for Orange;" "Well," he says, 30 "you will have to give me a ticket or get off;" Mr. Walsh says, "No, I won't do anything of the kind. I can prove I bought a ticket from the ticket agent at Newark; and the ticket was for Orange."

Q. Where did this conversation take place?

A. At East Orange depot.

Q. Where was the conductor while this conversation took place?

A. He was walking then between the two platforms of the car going towards Mr. Walsh.

40 Q. Where did he go?

A. He went beside Mr. Walsh.

Q. What did he say there, if anything?

A. He says "You will have to give me a ticket or get off."

Q. Had the train come to a stop yet?

A. Yes.

Q. What else occurred?

A. Mr. Walsh says "I gave you a ticket for Orange and am entitled to a ride there." He says, "Come, get off, or give me a ticket." Mr. Walsh 10 says, "I will get off, but either you or the company will hear from me," And Mr. Reed says, "Good night;" and Mr. Walsh says, "Good night," and off he went; and that was the last I heard from him.

Q. At the time he gave his last order to leave the train, where was the conductor with reference to Mr. Walsh—how close to him?

A. Standing right alongside of him.

Q. In what sort of position?

A. I suppose if he had not got off he would have 20 got hit or something.

By the COURT. Not what you suppose—what you saw.

Defendants' counsel moved to strike out the last answer.

A. Well, I will just show you; he said "Get off." (Witness illustrated by making a threatening gesture.) That is the idea exactly; he stood right 30 alongside of him.

Q. What did the conductor say when Mr. Walsh stepped down off the platform?

A. He got off with him, and when he got off he said "Good night."

Q. When he said "Good night," was he right at the platform or further down the passenger platform?

A. I forget that exactly, but I think they were both on the ground and just about to leave.

Q. You have lived in East Orange for quite a while?

A. I was born there.

Q. You are familiar with the facts about keeping open these stations at night?

A. At nine o'clock, I think, the Grove street station is closed; you can't buy any tickets there; I don't know as you can get in at the East Orange station but they have made a new rule at the Arling-
10 ton station.

Q. (By the COURT.) You don't know whether the station was closed or not?

A. It was closed at that time.

Further direct:

Q. Were the lights out?

A. Yes, sir.

Q. Inside the station I am speaking about?

A. Inside the station.

20 Q. You have worked for Mr. Coyne haven't you?

A. A little while.

Q. He keeps the only livery stable anywhere between Grove street and Mr. Walsh's house—or rather between Grove street and Brick Church?

A. Yes, sir.

Q. And do you know what the general custom of his stable is, with reference to being open after 10 o'clock—what time does he pretend to close his stable?

30 A. If all the horses are in we generally left at ten o'clock.

Objected to by defendants' counsel.

By the COURT. I shall exclude the whole testimony on that subject on both sides, for the reason that is not at all material; all the evidence there is in regard to it was on cross-examination as to how far it was to the stable.

Q. Mr. Lloyd, between what stations did you give
40 up your ticket?

A. Between Roseville and Newark—or Newark and Roseville.

Cross-examination by defendants' counsel :

Q. How do you know the station was closed that night?

A. Well, I have often tried to get in there to buy a ticket.

Q. Can you locate the time? 10

A. That it was closed?

Q. Yes, any special time.

A. Well, it was closed most generally every night at nine o'clock.

Q. Don't you know it is not closed any night until after 12 o'clock. Don't you know the track-walker closes the station every night after midnight?

A. I know they do now, but I didn't know it at that time.

Re-direct examination :

20

Q. Do you know about the ticket office being open?

A. The ticket office is not open after nine o'clock because I have tried to buy a ticket there.

Q. Is there any passenger train on the Delaware, Lackawanna & Western Road stopping at Brick Church and Grove street —(interrupted.)

Objected to by defendants' counsel on the 30
ground that it is not the best evidence.

By the COURT. If the witness knows, it is.

Q. (Continuing)—The question is, what time the next train, after the train that you were on—how long after your train goes up the next train goes? How much of an interval between that train and the train that is commonly called the midnight train.

A. About three-quarters of an hour.

40

Q. Do you know what time the midnight train leaves New York?

A. Twelve or a little after.

CHARLES RYNO, witness produced on behalf of the plaintiff, having been duly sworn according to law, testified as follows :

10 *Direct examination by plaintiff's counsel:*

Q. Where do you reside?

A. East Orange.

Q. What is your occupation?

A. Carpenter.

Q. Do you know the plaintiff, Mr. John F. Walsh?

A. Yes, sir.

Q. Do you know him by sight well?

A. Yes.

20 Q. Do you recollect any evening in the early part of this year on which you were a fellow passenger with him on the Delaware, Lackawanna & Western Rail Road?

A. Yes, sir.

Q. What evening of the week was it?

A. Saturday night.

Q. And upon what train were you passengers?

A. I was on the passenger coach on the front platform.

30 Q. (By the COURT.) What time did the train leave Newark?

A. 11.48.

Further direct:

Q. And you were on the front platform of the passenger coach—why were you on the front platform of the passenger coach?

A. I stood there smoking and talking to a friend.

Q. Why didn't you go in the smoker?

40 A. It was crowded.

Q. You stood on the north side or the south side?

A. North side.

Q. Near Mr. Walsh?

A. Yes, sir.

Q. Where was Mr. Walsh?

A. Mr. Walsh was sitting on the platform.

Q. Was your attention called to Mr. Walsh by anything that evening on the train?

A. Well, I heard some argument.

Q. Where did you hear the argument first? 10

A. Between Newark and Roseville.

Q. Whereabouts between Newark and Roseville?

A. Well, it was—no, not between Newark and Roseville; between Roseville and Grove street.

Q. What did you hear there?

A. Well, I could not say now; I would not say now; I would not like to say because I am not sure.

Q. Who took part in the conversation?

A. The conductor and Mr. Walsh.

Q. (By the COURT.) What was it about? what was 20
the conversation about?

A. Well, I didn't pay much attention to it; I was talking with a friend.

Further direct:

Q. You say you didn't pay much attention to the conversation; you can't say what it was about?

A. No, I could not say.

Q. You can't recollect any part of the conversation? 30

A. Only see him put off, that is all.

Q. You saw him put off?

A. I did; he was ordered off by the conductor.

Q. What did the conductor say?

A. I heard him ordered off by the conductor; I would not say what he said now.

Q. (By the COURT.) Go on and state what you saw.

A. I have heard enough since to tell, but I can't recollect that night what was said. 40

Q. Can you tell what the conductor did?

A. Well, he was ordered off; I would not like to say what he said.

Further direct :

Q. Where was the conductor at the time when he gave him the final order to get off?

A. I think he was on the rear platform of the smoking car.

10 Q. Your attention was not called to it?

A. I didn't pay much attention to it.

Q. Did you see the conductor after Mr. Walsh was put off the train?

A. I don't think I did.

By plaintiff's counsel. Is there any dispute at all that the next train was twelve o'clock from New York?

20 By the COURT. You need not ask that question, because it is proved it was, and there is no need of going into that unless it is disputed. And you have the time-table showing there is an interval of forty-five minutes between the two trains.

Said time-table is offered in evidence and marked Exhibit

Q. How far would you say it was by way of Main street, from Grove street station to Mr. Walsh's?

30 A. I should judge it was a mile.

By the COURT. To Mr. Walsh's house?
By plaintiff's counsel. Yes, sir.

Q. And how far would you say it was from Mr. Walsh's house to Brick Church station?

A. Well, over three-quarters — oh, from Mr. Walsh's house to Brick Church station—well, not quite a quarter of a mile.

It was agreed between counsel that it was the duty of the conductors to eject passengers from the trains who attempted to ride without tickets or on insufficient tickets, provided they refused to pay their fare or procure proper tickets when requested so to do.

Plaintiff rests, reserving the privilege to amend the pleadings, if it becomes necessary, as to make this an action of trespass.

A motion was made by plaintiff's counsel to amend the form of action from case to trespass which was granted (if necessary.) 10

Defendants' counsel moved for a non-suit. Said motion overruled. Exception taken.

To which refusal of the said Justice to order a judgment of non-suit, the defendants by their counsel excepted and prayed that this, their bill of exceptions might be sealed, and it is sealed accordingly. 20

DAVID A. DEPUE, J. [L. S.]

Defendants' counsel opened on behalf of the defendant.

AUGUSTUS W. REED, a witness produced on behalf of the defendant having been duly sworn according to law, testified as follows: 30

Direct examination by defendants' counsel:

Q. What is your business?

A. Conductor on the Delaware, Lackawanna and Western Rail Road.

Q. How long have you been employed by that road?

A. About fifteen years. 40

Q. As conductor all that time ?

A. No, sir ; about nine years.

Q. Nine years as conductor ?

A. Yes, sir.

Q. What were you before that ?

A. Baggage master and brakeman and drill master.

Q. Do you remember the night on which the difficulty with Mr. Walsh occurred ?

10 A. I remember it—one Saturday night in May.

Q. You don't remember the date ?

A. No, sir.

Q. It was what train ?

A. On the 11:30 from Hoboken.

Q. (By the COURT.) That is what time from here ?

A. 11.48 from here.

Further direct :

Q. Due at Roseville 11.53 ?

20 A. Yes, sir.

Q. And Grove street 11.55 ?

A. Yes, sir.

Q. Where did you see Mr. Walsh that night ?

A. When I came through the smoker he was sitting on the platform of the first coach after the smoker on the north side ; sitting on the platform with his feet on the step.

Q. And how many cars and coaches had you that night on your train ?

30 A. Two coaches besides the combination car.

Q. (By the plaintiff's counsel.) The combination car is a smoking car and baggage car combined ?

A. Yes, sir.

Further direct :

Q. Who were there on those two platforms, as far as you know ?

A. Two men on the smoking platform.

40 Q. (By the COURT.) Do you know who they were ?

A. No, sir; Mr. Walsh occupied the platform on the north, and two gentlemen on the south.

Further direct :

Q. Did you know any of them ?

A. I did not, no sir.

Q. Do you see any of them here this morning ?

A. None that I could recognise as being on that train that night.

Q. You cannot then identify any of these witnesses ? 10

A. No, sir.

Q. (By the COURT.) You didn't know any of them at the time ?

A. No, sir.

Q. (By plaintiff's counsel.) How many on the smoking car ?

A. Two.

Q. On the north side or on the south side ?

A. North.

Q. Nobody on the south ? 20

A. No, sir.

Q. By the COURT. He says Mr. Walsh was on the north side of the passenger car platform and two gentlemen on the south side ?

Further direct :

Q. When you came to the platform on which Mr. Walsh was sitting how many tickets did you take on that platform ? 30

A. Three, sir.

Q. And what were they ?

A. Three Roseville tickets.

Q. Who gave them to you ?

A. Mr. Walsh gave me one ; I took the two from these two gentlemen first, and then Mr. Walsh made three.

Q. (By the COURT.) Have you any doubt that was a Roseville ticket ?

A. No, sir ; I have not.

Q. You are sure of it ? 40

A. Yes, sir.

Q. Did you look at it?

A. Yes, sir.

Q. You got three tickets; one from Mr. Walsh and two from the other two persons on that platform?

A. Yes, sir.

Q. All Roseville tickets?

A. Yes, sir.

10 *Further direct :*

Q. What is the color of the Roseville tickets?

A. Light blue, sir.

Q. Have you one in your pocket.

A. Yes, sir—(witness produced same.)

Q. Is the reany other ticket of that color on your route?

A. No, sir.

Q. Was there any tickets of that color on your
20 route at that time except the Roseville tickets?

A. No, sir.

Q. What color is the Orange ticket?

A. White. (Witness produced tickets to Orange, Brick Church and Roseville.)

Q. Is that the kind in use then?

A. Yes, sir.

Q. Were the tickets to all the Oranges white? was
it light there so you could see?

A. Yes, sir, very good light.

30 Q. From what?

A. From the car.

The three tickets produced by the witness were offered in evidence as samples of the tickets in use at that time.

By the WITNESS. Those are not the tickets.

Q. But they were just like those in appearance?

A. Yes, sir.

40 Q. Now give us any incident which occurred just

then which makes you sure they were Roseville tickets you say you have no doubt about it?

A. I took these two Roseville tickets from these two gentlemen standing up; then I noticed Mr. Walsh sitting on the step—that is, I suppose it was Mr. Walsh sitting on the step; I didn't know the gentleman, I saw him sitting down there and asked him for a ticket, and he handed me this ticket, and I held it up to the light with the other two, and there was three Roseville tickets all of the same color; my 10 brakeman stood there.

Q. What was his name?

A. Michael Bailey; and it is the custom with me where there are Roseville tickets which commonly occurs, to call my brakeman's attention to it, and they get right there by the smoking car when they are riding short, and I called my brakeman's attention to it, and told him "These men are going to Roseville." They often buy Roseville tickets when they are going to the Oranges; the fare to Brick 20 Church is 10c. and to Orange, 12c.; I told the brakeman those two men standing back of him and this one sitting down went to Roseville, and to see they got off there.

Q. Did you show him the ticket?

A. I held the tickets right up in my hand. I could not say whether he saw them or not; he was standing right by my side, and I spoke to him softly so everybody should not hear.

Q. You and he were passing through together? 30

A. He was standing there, sir.

Q. Did he make any reply?

A. I could not say whether he said "all right" or anything. I went into the car then, sir.

Q. Tell me how many trips a day you make, and between what points?

A. One trip in the morning from Newark to Montclair, back to Hoboken; then I laid off through the middle of the day. Then I ran the 4.50 from New York to South Orange and back again, and then the 40

7.25 from Hoboken to South Orange and back again, and then the 11.30 from Hoboken to South Orange and back again. The 11.30 is the principal trip where I have this trouble—especially Saturday nights.

Q. How frequently does it happen that attempts are made by passengers to ride on Roseville tickets to stations further on?

A. It is a common occurrence.

Q. Now, when you had mentioned it to the brakeman, what did you do?

A. I went on through, working my train, sir.

Q. What was the next you heard of Walsh?

A. I was at the hind end of the train when we left Roseville and the brakeman came and said I would have to come on there, he would not get off and he wanted the conductor.

Q. (By the COURT.) Where was that?

A. After we left Roseville.

Q. You were at the rear end of the whole train?

20 A. Yes, sir.

Further direct:

Q. Then what did you do?

A. I immediately started up ahead.

Q. How far did you go up?

A. Until we got to Grove street.

Q. How far up on the train did you go? what part of the train did you go to?

A. To the platform where Mr. Walsh was sitting.

30 Q. When you reached there where was the train?

A. Just stopping at Grove street.

Q. What did you do there?

A. I opened the door and stepped outside just as we were just stopping; then I told Mr. Walsh he had a ticket for Roseville and he would have to get off.

Q. What did he say?

A. I don't remember Mr. Walsh saying anything; he was sitting down; all I remember Mr. Walsh doing was getting up and getting off.

40

Q. Your recollection is then, that he got up and got off without any remark?

A. I don't remember any remark he made; I looked in the coach to see if there were passengers to get off, so I could start my train.

Q. He testifies you told him he must get off, and he told you he gave you an Orange ticket; do you remember that?

A. No, sir.

Q. And that you told him he must get off, and I waved your hand—somebody else says that—do you remember that?

A. No, sir; I told him he had a Roseville ticket and must get off.

Q. (By the COURT.) Do you recollect whether Mr. Walsh said to you he had an Orange ticket?

A. I don't recollect.

Further direct:

Q. Then you went on? 20

A. I turned round to look in the car to see if there were any passengers to get off while Mr. Walsh was stepping off.

Q. Do you know how long these Orange and Roseville tickets are good—whether they are limited or good until used?

A. They are good until used.

Q. How much fare would Mr. Walsh have had to pay you to ride on to Orange?

A. From Grove street to Brick Church? 30

Q. He said he gave you an Orange ticket; suppose that was done, or suppose he wanted to go to Orange how much would he have to pay?

A. The fare to Orange is 20c., to Brick Church 16c., with a draw-back of 10c. in each case.

Q. So in one case it would cost him 10c. and the other 6c.?

A. Yes, sir.

Q. If he bought one at the station, how much?

A. If he bought one at the station to Brick Church 40

it would cost him 6c., to Orange 10c. From Roseville to Brick Church is 6c., to Orange 10c. The conductor's fare would be 20c. to Orange, and he would get a draw-back of 10c.

Cross examination by plaintiff's counsel :

Q. I understood you to say that there were six men, exclusive of the brakeman and Mr. Walsh, on the two platforms of those two cars?

10 A. I did not sir.

Q. What did you say?

A. I said there was two on the smoking car platform.

Q. How many on both those platforms?

A. Including Mr. Walsh, and excluding the brakeman and myself there was five.

Q. How many passengers on the front platform of that passenger coach, and the rear platform of the smoking coach, exclusive of Mr. Walsh, yourself and
20 the brakeman?

A. Four.

Q. You are sure of that?

A. Positive.

Q. And three of those four were Roseville tickets?

A. Three of the five was Roseville tickets including Mr. Walsh.

Q. Three of the five?

A. Yes, sir.

30 By the COURT. The two passengers that were on the same platform with Mr. Walsh, and Mr. Walsh, had Roseville tickets?

By plaintiff's counsel. Yes, sir; three of them, according to this witness.

Q. You are clear about that, are you?

A. Yes, sir, positive.

Q. Did you say you didn't know either of them?

A. I didn't, no sir.

40 Q. You don't know this man Bailey Lloyd?

A. I do now, seeing him here. I didn't know him by name, no sir.

Q. Did you know him by sight?

A. I couldn't recognize him; no sir; at that time.

Q. Was he on that platform?

A. I couldn't say that he was.

Q. You couldn't say he wasn't?

A. No, sir.

Q. You saw this man Ryno, who said he was talking with his friend on that platform; did you recognize Ryno as one of them? 10

A. No, sir; I didn't know any of them.

Q. Will you say that Ryno wasn't there?

A. I wouldn't say that he was or wasn't.

Q. Or that he wasn't talking with another—three persons?

A. There was no three parties together, no, sir; there was two on the smoking car and two on the other.

Q. Will you say that this man who testified here, 20 under the name of John Lloyd, one of the witnesses for Mr. Walsh, was not on that platform also?

A. There was only two on the smoking car.

Q. I want to know whether you will say John Lloyd was or was not on that platform?

A. All I can tell you there was five men on the two platforms, who they were or were not, I couldn't say.

Q. You have not identified any of the persons you have seen in this room, as any of the persons who 30 were on either of these platforms that evening?

A. No, sir, only what I have heard in this room.

Q. Now you are sure there was only five on those two platforms that evening?

A. Yes, sir.

Q. You say you were on the lookout that night for these fellows that beat the railroad company?

A. Yes, sir.

Q. You are on the lookout for them—

A. Yes, sir.

Q. Saturday nights; why do you look out for them particularly that night?

A. We have more that night.

Q. The train is full, crowded, standing up?

A. We have more conniving business going on that night; they give us sometimes theatre tickets, tea tickets and everything else Saturday nights.

Q. Now you were on the look out that night for these fellows that beat the road?

10 A. Yes, sir.

Q. And you found three people on that platform who wanted to get out at Roseville?

A. Yes, sir; two of them got off, but Mr. Walsh didn't.

Q. How do you know two of them got off?

A. My brakeman says so and I can rely on him.

Q. How many passengers in all got off at Roseville that evening?

A. From the whole train?

20 Q. Yes.

A. That I couldn't say.

Q. A great many?

A. Quite a few, yes, sir.

Q. But you say that two of these that were on when you passed through, got off at Roseville?

A. My brakeman said so.

Q. (By the COURT.) I understand you were not on that platform, or within sight of that platform when the train was at Roseville?

30 A. I was two cars from it.

Q. And all the information you have with regard to persons getting off, or the refusal of Walsh to get off at Roseville, was the information you got from your brakeman when he came back and told you?

A. Yes, sir.

Further cross-examined:

Q. Now, Mr. Reed, why do you take up the tickets for Orange, and through there, between Newark 40 and Roseville?

A. I couldn't go through and take up the Roseville tickets and then the Orange tickets. I have about all I can do.

Q. You take up all the tickets to the City of Orange between Roseville and Newark?

A. Yes, sir.

Q. Then you trust to your memory to identify who give you the tickets and what their stations are?

A. Well, we have to in a great many respects, sir.

Q. What is an ordinary passenger load for one of 10 those cars?

By defendants' counsel. Is that material in this case?

By the COURT. Yes; how many a car will hold.

A. An ordinary passenger car, fifty.

Q. On these crowded nights how many would you have in excess of fifty? 20

A. I could not tell; some nights you would run very light.

Q. I am talking about the nights you are crowded.

A. I couldn't say.

Q. (By the COURT.) How was it that night; how was the train that night?

A. The train was full?

Q. Had you more passengers on that train than you could seat in the cars?

A. Well, that I couldn't tell unless I went through 30 and looked to see where there was vacant seats, for there is very often in the train you can make a good many seats when they have children and packages.

Further cross-examined:

Q. It is quite the usual thing on Saturday night, for that train to be crowded, market people going up from Newark to the Oranges?

A. Yes, sir; from Waldman's.

Q. Well I don't care where they are from? 40

A. You spoke of market people.

Q. It is quite common to find that train crowded, isn't it?

A. Quite frequently.

Q. It is about all you can do to get through that train when it is crowded, between Roseville and Newark, isn't it?

A. It keeps a man going pretty lively.

Q. And when your brakeman came and told you to
10 come to that platform, for what purpose did you go; what intention had you?

A. To see what Mr. Walsh had to say, or to put him off.

Q. You went there with the intention of putting him off if he did not give you another ticket?

A. Yes, sir.

Q. And you carried out that intention?

A. I didn't put him off; he got off when I told him
to.

20 Q. How often did you tell him to get off?

A. I don't remember telling him more than once.

Q. Do you mean to say when you told him to get off, like a lamb, he got off?

A. Yes, sir.

Q. How close were you to him when you last told him to get off?

A. I am pretty positive I was looking in the passenger coach to see whether there was any passengers to get off when Mr. Walsh got off.

30 Q. I don't ask you that; when you told him to get off?

A. He was sitting down when I told him he had a Roseville ticket and he must get off; I was standing right behind him.

Q. What did you say to him when he got off?

A. I didn't say anything to him when he got off.

Q. Didn't you say "good-night?"

A. I didn't; the gentleman is mistaken about that; I always say to my rear brakeman "all right," and
40 when I said "all right" the gentleman thought I said "good-night," probably.

Q. So you say Mr. Walsh was put off because he was trying to beat his way on the train?

A. Mr. Walsh got off, I didn't put him off.

Q. He got off because you told him to?

A. Yes, sir.

Q. If he had not got off what would you have done?

Objected to by defendants' counsel.

By the COURT. He says he went forward for the purpose of putting him off if he did 10 not get off.

Re-direct examination by plaintiff's counsel:

Q. Did you have any trouble with Mr. Walsh at any other time?

A. I don't know Mr. Walsh.

Q. Well, this man?

A. No, sir.

Q. That is the only time you had any trouble 20 with him?

A. To the best of my belief and knowledge that is all.

GEORGE W. HUNT, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by defendants' counsel:

Q. Are you in the employ of the horse railroad 30 company here?

A. Yes, sir.

Q. Which one?

A. Orange and Newark.

Q. Between what points does that line run?

A. It runs from Market street depot to Orange.

Q. How near does it go to the Grove street depot on the Delaware, Lackawanna & Western Rail Road?

A. I think it is one block—I am not positive.

Q. How near does it go to Brick Church? 40

A. I am not positive of this point, but I think it is only one block across.

Q. Now in the month of May last—the tenth of May—have you a time-table of the road about you?

A. Yes, sir, I have the same time-table we are using at present.

Q. What position do you occupy on the road?

A. Starter.

Q. (By the COURT.) What time did a car going up 10 to Orange pass the Grove street station after 11.55?

A. After 11.55?

Q. Yes.

A. I can tell by the table.

Further direct:

Q. That is a time-table, is it, of the cars at that time?

A. Yes, sir.

Q. Now, what is the last car that left the Market 20 street depot that night?

By the COURT. He will tell you what time it passes Grove street in a few minutes.

Q. Well?

A. The next to the last one passes there about 12.05.

Q. (By plaintiff's counsel.) Passes the junction at 12.05?

30 A. 12.05—that would be about twelve o'clock.

Further direct:

Q. At Grove street?

A. Yes, sir.

Q. What is the one after that?

A. The next one would be about 12.30.

Q. Now, the next one before twelve o'clock?

A. 11.30.

Q. Then there was 11.30, 12.00, and 12.30.—12.30
40 the last?

A. 12.30 is the last.

Cross-examination by defendants' counsel :

Q. When you say 11.30, 12.00 and 12.30 you only approximate as to that station ?

A. That is about the running time, from Roseville to Grove street—six minutes.

Q. That is your estimated time ?

A. Yes, sir.

Q. (By defendants counsel.) It would not vary 10 more than five or six minutes ?

A. No, sir.

Further cross :

Q. But it might be five or six minutes either way ?

A. It might be.

Q. There is no way to fix definitely the arrival of those cars at Grove street except by estimation ?

A. Only by estimation.

Q. And that would be about twelve o'clock—might 20 be five minutes earlier ?

A. Not earlier, no sir.

Q. It might be five minutes later ?

A. It might be a little later, but very little.

MICHAEL BOYLE, a witness produced on behalf of the defendant, having been duly sworn, testified as follows :

30

Direct examination by defendants' counsel :

Q. Where do you live ?

A. I live in Newark.

Q. And your business.

A. Brakeman on the Delaware, Lackawanna & Western Rail Road.

Q. Were you in their employ on the 10th of May last ?

A. Yes, sir.

Q. How long have you been in their employ ? 40

A. For ten years off and on.

Q. As brakeman all the time?

A. No, sir.

Q. Well, how much of the time brakeman?

A. I have been brakeman a little over a year.

Q. And what were you before that?

A. I was on the baggage and working on the drill, tending to cars down there.

Q. How old are you?

10 A. 29 years old.

Q. Were you on the train last May when the difficulty with Mr. Walsh occurred?

A. Yes, sir.

Q. You are the brakeman to whom reference has been made?

A. Yes, sir.

Q. Now just tell us what happened, in your own way?

A. Mr. Reed, the conductor, came through the
20 smoker, and there was four men on the platform. Mr. Walsh sat on the north side of the first passenger coach from the smoker. He sat on the step. There was two other gentlemen on the smoking car, and the other two I could not say how they were placed; and these other two men had Roseville tickets, and the conductor came through—(interrupted.)

Q. Which two men had Roseville tickets?

A. I could not tell the other two men.

Q. (By the COURT.) Were they the two men who
30 stood on the same platform where Mr. Walsh was sitting?

A. No, sir, they were on the smoker.

Further direct:

Q. Well?

A. And Mr. Walsh sat down on the platform, and the conductor, when he took the ticket from Mr. Walsh, said "these three tickets are for Roseville;" I seen the tickets; he showed them to me, and he
40 says "look out for those three men;" and I did—I always do.

Q. (By the COURT.) You say there were three tickets that were got there for Roseville? you say you saw the tickets?

A. Yes, sir; I saw the tickets in the conductor's hand.

Q. Did you say you saw one of those tickets given by Mr. Walsh?

A. No, sir; I saw the tickets in the conductor's hand, and he pointed right down.

Further direct:

10

Q. He pointed to Mr. Walsh?

A. Yes, sir.

Q. Did he point to the other men?

A. Yes, sir.

Q. So he pointed to the three men who gave him Roseville tickets?

A. Yes, sir.

Q. When you say the three men that gave Roseville tickets were on the smoking car, have you any recollection about that?

A. I think they were on the smoking car.

Q. What I want to get at is whether the three that had Roseville tickets were all on the smoker, or whether Mr. Walsh with one of the two was on the other car.

A. Well, they stood there; I suppose they went over when he took the tickets.

Q. When you got to Roseville, what happened there? did any of them get off?

30

A. Yes, sir.

Q. Which ones?

A. The two men he pointed out except Mr. Walsh. Mr. Walsh sat on the platform, and I hollered out "Roseville;" I told him, "You had a Roseville ticket;" he didn't say anything to me and I told him he would have to get off; he said he would have to see the conductor and I went back for the conductor in the rear car, and I told him about it; I told him, "That man on the steps didn't get off;" and he came

40

up through the car, and when we got to Grove street all that he told him was, "to get off;" that he had a Roseville ticket, and he didn't say anything else to him; he said he wanted a ticket or he must get off.

Q. What did Mr. Walsh say?

A. Mr. Walsh got off; he did not say a word.

Q. He didn't say anything?

A. No, sir.

10 Q. Did the conductor—how much passed between them; just that one remark?

A. That was all: the conductor told him to get off; that was all.

Q. The conductor didn't touch him?

A. No, sir, he didn't lay his hands on him.

Q. Did you know any of the men?

A. No, sir.

Q. (By the COURT.) You don't know any of these men?

20 A. No, sir.

Q. You cannot identify any of the persons you saw in the court room as being on that platform?

A. No, sir.

Further direct:

Q. There was never any other trouble with Mr. Walsh except at that time?

A. No, sir.

Q. How long have you been running on that train?

30 A. A year next month.

Q. Have you seen things of this kind occur before?

A. Yes, sir.

Q. I mean passengers offering Roseville tickets and then trying to ride further?

A. It happens every night in the week.

Q. Did you ever see them offer anything besides—
(interrupted.)

40 By plaintiff's counsel. I don't know how competent that evidence is,

By the COURT. I think the evidence is competent in this view. It is offered for the purpose of showing that the attention of the conductor was directed to that subject.

Q. Was it light enough so you could easily see there that night?

A. Yes, sir.

Q. What color is the Roseville ticket?

A. Light blue. 10

Q. What color is the Orange ticket?

A. White.

Q. These tickets that the conductor produced here—is that the way the tickets looked?

A. Yes, sir.

Q. Were there any other blue tickets on that route?

A. No, sir.

Q. For any other stations at which that train stopped?

A. No, sir. 20

Q. Was it light enough so you could easily see that night?

A. Yes, sir.

Q. (By the COURT.) Had the conductor his lantern with him?

A. No, sir.

Q. And it was light enough to see without the lantern?

A. Yes, sir, he never used his lantern. 30

Further direct:

Q. How many tickets did he have in his hand when he held them up to you?

A. Three.

Q. All blue?

A. Yes, sir.

Q. Did you hear what he said easily?

A. He said to me, "These two men there and that man sitting down on the step is Roseville." I says, "all right." 40

Q. As a rule, what is the custom when the conductor—when these men offer short tickets and then ride on and the conductor speaks to them—what is the rule? do they generally pay, or get off, or what?

By plaintiff's counsel. What difference does that make?

By the COURT. That does not make any difference. The question is whether he was
10 one of that class.

Q. (By the COURT.) Did you remain on that platform from the time the conductor came through and took up the tickets?

A. Yes, sir.

Q. On that platform all the while?

A. Until we got to Roseville.

Q. Were the same three persons that were pointed out to you as persons having Roseville tickets—were
20 they on the platform all the time from the time the tickets were taken up until you got to Roseville?

A. Mr. Walsh sat there, and the other two gentlemen were over on the other side.

Q. Did they remain there from the time the tickets were taken up?

A. Yes, sir.

Cross-examined by plaintiff's counsel :

Q. You say there were how many men on that
30 platform beside yourself and the conductor?

A. There were four men.

Q. You say four?

By the COURT. Now count.

By the plaintiff's counsel. I understood the conductor to say five.

By the COURT. He says five when he comes to count; he says there were two men on
40 the platform of the smoker.

Q. Are you certain there were four only?

A. Yes, sir.

Q. You are positive about that?

A. Yes, sir.

Q. How do you say the four were distributed?

A. Well, Mr. Walsh sat down on the platform of the coach.

Q. Yes.

A. And the other men was over on the other platform of the smoking car. 10

Q. Now, do I understand you to say Mr. Walsh was the only man on the front platform of the passenger car?

A. Yes, sir; I was standing there too.

Q. You and he were the only ones there?

A. Yes, sir.

Q. You heard the testimony of Mr. Ryno to the effect that he stood on the platform of that coach?

A. I don't know the gentleman.

Q. But you saw him on the stand; you were in 20 the court room were you not?

A. Yes, sir.

Q. Did you see him there?

A. I could not remember his face.

Q. No; but did you see him on that passenger platform on that night?

A. On the north side?

Q. Yes; on the north side of the front platform of the passenger coach?

A. No, sir. 30

Q. If Mr. Walsh and you were there alone he could not be there, could he?

A. No, sir.

Q. According to your statement, he was not there?

A. No, sir.

Q. Now, the first thing that you knew was, you had your attention called to the Roseville tickets when the conductor exhibited three tickets in his hand and pointed to these men?

A. Yes, sir. 40

Q. Two, I understand you to say on the rear platform of the—(interrupted.)

A. On the platform of the smoking car.

Q. On the north or south side of the platform?

A. They could walk across; they were scattered around.

Q. What did you say to Mr. Walsh when he got to Roseville?

A. I said he would have to get off.

10 Q. What did he say to you?

A. He said I would have to go and see the conductor.

Q. He didn't tell you he had an Orange ticket?

A. No, sir.

Q. Now, when the conductor came through, I understand you to say, that he said nothing to Mr. Walsh, except to give him another ticket or get off?

A. That is all he said.

Q. And Mr. Walsh made no reply?

20 A. No, sir.

Q. And walked off?

A. He got off the platform.

Q. Without a word?

A. He didn't say a word.

Q. He didn't tell the conductor he could prove by the ticket agent at Newark that he had bought a ticket to Orange?

A. No, sir.

Q. And the conductor didn't say it but once?

30 A. No, sir.

Q. And off he stepped?

A. And off he stepped.

Q. You haven't any lantern?

A. Yes, sir.

Q. You are the only lantern man on that platform?

A. Yes, sir.

Q. Do you carry that in your hand all the time?

A. Yes, sir.

Q. While you are on the platform?

40 A. Yes, sir.

Q. I understand you to say then that the conductor trusted to the light of your lantern, wherever it might be on the platform?

A. Yes, sir—there is light enough there to see.

Q. Now in this passenger coach, which end do you keep the stove in?

A. Which end?

Q. Yes?

A. There is a stove on the north side of the passenger coach, and a stove in the other end on the 10 south side.

Q. And you run the coach with the stove on that side?

A. Yes, sir.

Q. Now in the summer time some of those stoves you take down; don't you.

A. Some of them, yes, sir.

Q. But it is common to keep some of them up all summer.

A. Some of them.

20

Q. And where you have that patent heater, it is common to keep that up all the time?

A. Yes, sir.

Q. Now that is close up in the corner of that car, and shuts up that window, does it not, where you have a heater. There is a little window in the door and a window in the coach. Now in these cars where you have a heater and it is kept up, it closes up that window?

A. In the heater cars, but we have stoves; there 30 was a stove in that car.

Q. This was up still?

A. Yes, sir, it is not right up in the window.

Q. Is there anything to keep the wood work from the heat of the stove?

A. No, sir.

Q. Now, have you detailed all the conversation that took place between Mr. Walsh and the conductor, or Mr. Walsh and yourself, or this transaction, from the beginning to the end?

40

A. I was there.

Q. I say, have you told us all that you know about this transaction?

A. Yes, sir.

Q. All that was said to you?

A. Yes, sir.

Q. Did you identify any of these persons who were here on the witness stand to-day?

A. No, sir, I could not.

10 Q. As being there on that platform?

A. No, sir.

Q. Or saying anything to you about it?

A. No, sir, none of them said anything to me.

Q. Did none of them speak to you that night after you passed Grove street about this man Walsh?

A. No, sir.

Q. Did not somebody say to you "you have made a mistake in that case," and "Mr. Walsh was an honest man?"

20 A. No, sir, nobody said a word to me.

Q. You say nobody said that?

A. No, sir.

Re-direct examination by defendants' counsel :

Q. Was there not a coal box between the stove and the window?

A. Yes, sir, below the window.

Q. That makes the stove set back a little ways?

A. Yes, sir.

30 Q. The stove-pipe is not large enough to shut out the light?

A. No, sir; we kept the blind up.

Q. In point of fact, was there any difficulty in seeing the tickets there that night?

A. Not a bit.

Q. Or any other night?

A. No, sir.

Q. Do you know whether the Grove street station was open that night?

40 A. Yes, sir.

Q. Do you know when it was closed?

A. It was closed the last train up.

Re-cross-examined by plaintiff's counsel :

Q. I understand you keep the window screen of these corner windows up?

A. Yes, sir.

Q. You mean by "up" raised up?

A. They are up as far as they will go.

Q. What is the effect of that on the glass? 10

A. It throws the light right out on the platform.

Q. What you know about this Grove street depot is only hearsay, is it not?

A. No, sir.

Q. How do you know when it is closed?

A. Because we come down there at that time.

Q. What time do you come down?

A. 12.33.

Q. The door is closed, isn't it?

20

A. No, sir.

Q. The door is open?

A. Yes, sir.

JOHN LONG, a witness produced on the part of the aforesaid defendant, being duly sworn testified as follows :

Direct examination by defendants' counsel : 30

Q. What is is your business?

A. Conductor.

Q. What road?

A. The Delaware, Lackawanna & Western.

Q. What train?

A. South Orange.

Q. You sometimes run night trips from Newark to South Orange?

A. Every other week every night.

Q. Do you have, sometimes, Roseville tickets of- 40

ferred you by people and then they attempt to ride further?

A. Very nearly every night in the week.

Plaintiff's counsel. I do not see the competency of this evidence.

By the COURT. I do not know that this is competent; it does not tend to show that this other conductor was vigilant.

10 The evidence is not competent for the purpose of making a defense. It is competent only for the purpose of showing that the attention of this witness was directed to this subject, and it might have been directed to this subject by some one telling him to look out for that man.

20 If it was directed to this subject by the fact that he had experienced the condition of affairs which he states existed that night, that evidence is undoubtedly competent. This is not.

Defendants counsel prays an exception.

To which refusal to admit the said evidence the defendants by their counsel excepted and prayed that this their bill of exceptions might be sealed; and it is sealed accordingly.

DAVID A. DEPUE, J. [L.S.]

30 By defendants' counsel, I have three or four other witnesses to the same effect.

By the COURT. You need not call them.

By the defendants' counsel. We make the offer.

To which refusal to admit the said offer of evidence on the part of the said defendants, the defendants by their counsel excepted, and prayed that this their bill of exceptions might be sealed, and it is sealed accordingly.

40 DAVID A. DEPUE, J. [L. S.]

By the COURT. You have made the offer. It is down on the record. That is all that is necessary.

JAMES WELCH, a witness produced on behalf of the said defendants, being duly sworn, testified as follows :

Direct examination by defendants' counsel : 10

Q. What is your business ?

A. Track-walker.

Q. What railroad ?

A. Morris and Essex.

Q. Between what points do you go ?

A. Between the canal bridge and Brick Church.

Q. The canal bridge and Newark and Brick Church ?

A. Yes, sir.

Q. What stations do you pass ? 20

A. Well, I pass Roseville station, and Grove street and the Junction and Brick Church.

Q. Now, where were you walking in May last, that same route ?

A. Yes, sir.

Q. What time of day did you walk there ?

A. In the night, sir.

Q. Beginning at what hour ?

A. At six o'clock in the night.

Q. And quit when ? 30

A. From six o'clock in the evening to half-past five in the morning.

Q. Last May, what time of night did they shut up the Grove street depot ?

A. It was about 20 minutes to one, that is about the time the last train comes there—that is the last train.

Q. Who did it ?

A. I did it.

Q. It is your duty to do that ? 40

A. Yes, sir.

Q. Did you shut it up any earlier than that any night?

A. No, sir.

Q. Just after the last train left?

A. After the last train I put out the lights there and turned the key in the door, and walked up the road.

Q. And until it was shut up you left the lights
10 burning?

A. Yes, sir.

Cross-examination by plaintiffs' counsel :

Q. The ticket office is closed up; they don't keep the ticket offices open till that time of night?

A. No, sir.

Q. They close them about what—about nine o'clock?

A. About nine o'clock, I guess; I couldn't say ex-
20 actly.

Q. What lights do they keep burning in there?

A. There is one burner inside and one outside.

Q. One of those oil reflector lamps?

A. Yes, sir.

SAMUEL T. BRAY, a witness produced on behalf of the aforesaid defendant, being duly sworn, testified as follows :

30

Direct examination by defendants' counsel :

Q. What is your business, Mr. Bray?

A. I am in the superintendent's office of the Delaware, Lackawanna & Western Rail Road.

Q. You are familiar with the workings of the road?

A. Yes, sir.

Q. How long have you been there?

A. About 14 years.

Q. Do you know the conductor Reed who has just
40 been sworn here?

A. I do.

Q. What is his character as to competency as a conductor, and faithfulness?

By plaintiff's counsel. How is that competent?

By the COURT. That is not competent; he is presumed to be faithful and competent till somebody proves he is not.

Q. When a passenger gets on a train without a ticket, can he pay money to the conductor instead of getting off to buy a ticket? 10

A. Yes, sir.

Q. What becomes of the tickets after the conductors have punched them?

A. They are sent in to the general office and destroyed.

Q. They are never preserved?

A. No, sir.

Q. (By the COURT.) No record kept of them? 20

A. The conductor's reports are filed but the tickets are destroyed.

By plaintiff's counsel. We asked you to produce the ticket.

By defendants' counsel. Yes, we simply wanted to account for it, that's all.

Defendants rest.

30

SELDEN A. WALKER, a witness produced by the aforesaid plaintiff in rebuttal, being duly sworn, on his oath testified as follows:

Direct examination by plaintiff's counsel:

Q. What is your occupation?

A. I am in the milk business.

Q. You drive a milk wagon at present?

A. Yes, sir.

40

Q. Do you recollect in the early part of this year being on the 11.48 train from Newark with any of these witnesses who are here in this case ?

A. Yes, sir.

Q. Do you recollect about when it was ?

A. The tenth of May last—Saturday night.

Q. How many of these witnesses do you know, of those who have sworn here, as being on that train—how many of them do you know ?

10 A. I know them all.

Q. Did you see them all on that night on that train ?

A. Yes, sir.

Q. Where were they all ?

By defendants' counsel. I object to this evidence ; it should have been given in the first place.

20 By the COURT. I do not think that the evidence is incompetent at this time.

It might be excluded on this ground, that they might have called this witness before, but the place in which these persons were on those platforms did not assume any importance until the testimony of the last two witnesses.

Q. You say you saw them all on that train ?

A. Yes, sir.

30 Q. Whereabouts were you ?

A. I couldn't say.

Q. (By the COURT.) Did you ride up on that train ?

A. Yes, sir.

Further direct :

Q. Whereabouts on that train were you ?

A. I was between the smoker and the passenger coach following, on the platform.

Q. But whereabouts on those platforms you can-
40 not say ?

A. No, sir.

Q. (By the COURT.) Nor on which one?

A. No, sir.

Further direct :

Q. Now, who were on the platform that you knew, and continued there while you continued there?

A. Charles Ryno, Bailey Lloyd, John Lloyd, John Walsh and myself.

Q. Those you know? 10

A. Yes, sir.

Q. Do you know Frank Chisholm?

A. Yes, sir.

Q. Was he there?

A. Not to my recollection.

Q. Then there were yourself, Charles Ryno, Bailey Lloyd, John Lloyd, and John Walsh?

A. Yes, sir.

Q. Did they all continue there as long as you were there? 20

A. Yes, sir.

Q. (By the COURT.) Where did you get off?

A. Roseville.

Further direct :

Q. Did you have a Roseville ticket?

A. Yes, sir.

Q. Did anybody else get off those platforms at Roseville besides yourself?

A. No, sir, not to the best of my recollection. 30

Q. (By the COURT.) Not from either one of those platforms?

A. No, sir.

Cross-examination by defendants' counsel :

Q. To the best of your recollection, could you say with any certainty whether anybody else got off or not?

A. No, sir; I could not say positively.

Q. Well, you couldn't tell where you were on the 40

train exactly; could you tell whether you were in the door; that is, standing in the door?

A. No, sir; I think I was sitting on the railing.

Q. Yes, but you couldn't tell whether you were in the door, or sitting on the railing, or where on the platform?

A. I wasn't standing in the door, I can say that.

Q. What do you mean by the expression you couldn't tell where you were?

10 A. I mean I could not tell just exactly what position I stood in.

Q. (By the COURT.) Whether it was on the platform of the smoker, or the platform of this passenger car?

A. No, sir.

Further cross:

Q. You couldn't tell which?

A. No, sir.

20

JOHN LLOYD, a witness heretofore called and sworn, is recalled in rebuttal, for further

Direct examination by plaintiff's counsel:

Q. How many persons whom you know were on that platform—those two platforms—not with reference to what position they were in on the platforms, but were on those two platforms, besides the 30 brakeman and the conductor, and continued thereon to Roseville—name the persons, you know?

Q. Mr. Walsh, Bailey Lloyd, Selden Walker, Charley Ryno and myself.

Q. (By the COURT.) Anybody else there?

A. There was another man got on the train but I don't remember whether he was on the platform or in the smoker.

Further direct:

40 Q. Who was he.

A. Mr. Chisholm.

Q. You don't remember whether he was on the platform or not?

A. No, sir.

Q. But he might have been?

A. He might have been.

Q. Did you give an Orange ticket or a Roseville ticket?

A. I gave an Arlington ave. ticket—that is the kind of a ticket, a strip ticket; and there is an Orange ticket.—(Witness exhibited said tickets.)

Q. (By the COURT.) Is the Orange ticket blue?

A. Yes, sir; that is an excursion ticket.

By the COURT. This ticket was a single ticket?

By plaintiff's counsel. Yes, sir.

Further direct:

Q. How many persons got off of that platform at Roseville? ²⁰

A. Only my friend Mr. Walker that I can remember?

Q. (By the COURT.) You got off at Roseville?

A. At East Orange, Arlington ave.

Further direct:

Q. At the station beyond Grove st.?

A. Yes, sir.

30

Cross-examination by defendants' counsel:

Q. Do you know whether Chisholm got off at Roseville?

A. No, sir, he gets off at Brick Church.

Q. I didn't ask you where he gets off, but whether he got off at Roseville?

A. No, sir, he didn't get off at Roseville.

Q. Did you see him?

A. I saw him after we left Roseville, yes, sir.

40

Q. (By the COURT.) Now, Grove street station was called at that time, what?

A. East Orange.

Q. What is it called now?

A. Grove street.

Q. A moment ago somebody called it Arlington avenue?

A. That was the station beyond Grove street.

Q. They have taken the name of East Orange from
10 the Grove street station and carried it to Arlington
avenue station which is the old Junction?

A. Yes, sir.

Further cross :

Q. The present Grove street station has been called so three or four years, has it not?

A. Not to my recollection—the street has.

Q. When was the change in the name made?

A. I don't know ; it was a little while ago.

20

BAILEY LLOYD, a witness produced on behalf of the plaintiff recalled in rebuttal :

Direct examination by plaintiff's counsel :

Q. How many persons beside the conductor and brakeman, that you know, were to your knowledge on the two platforms between the smoker and the first
30 passenger coach on this night in question? How many persons you can identify by name?

A. Mr. Walker, Mr. Ryno, Mr. John Lloyd and Mr. Walsh—I think that is all to my knowledge.

Q. And yourself?

A. And myself.

Q. What can you say about Frank Chisholm?

A. Well, I could not say any more than that I think he was there ; I would not be positive.

Q. Now did all those persons remain on that plat-
40 form until they got to Roseville?

A. Yes, sir.

Q. Who got off that platform at Roseville?

A. Selden Walker.

Q. Anybody else?

A. Not to my knowledge.

Q. What kind of a ticket did you give to this conductor?

A. Well, I could not say.

Q. Well, was it a ticket to Roseville?

A. Oh, no, sir.

Q. You stood on that platform for how long—from Newark to what point? 10

A. East Orange—Arlington avenue.

Cross-examination by defendants' counsel:

Q. Were you on the same platform all the time or not?

A. Yes, sir, I think I was.

Q. You think you were—can you tell whether you were or not? 20

A. Yes, sir, I was.

Q. Where were you that night?

A. I think I was to Fred. Waldman's, if I am not mistaken.

Q. Where is that?

A. A variety theatre on Market street.

Q. Had you been in company with any of the rest of them that night?

A. Yes, sir.

Q. Who were they? 30

A. Mr. Walker, Mr. Ryno and Mr. Lloyd.

Q. (By the COURT.) Not Mr. Walsh?

A. No, sir.

Re-direct:

Q. Did John Lloyd remain on that platform from the time you left Newark until you got to Arlington avenue?

A. He remained with me and got off at Arlington avenue. 40

Q. How about Charlie Ryno—was he on the platform continuously or not from the time you left Newark?

A. Yes, sir.

Q. He was?

A. Yes, sir.

Re-cross-examined:

Q. You hadn't any motive to watch and see whether they were on the same platform all the time had you?

A. Well, no more than I knew they were in my party.

Q. But you would not like to swear that they did not go from one platform to another?

A. Oh, well, they were all there together. I could not say whether they crossed over and came back or kept going; but they were in my sight.

Q. (By the COURT.) They were on one platform or the other all the time?

A. Yes, sir.

CHARLES RYNO, a witness heretofore produced on behalf of the plaintiff, recalled in rebuttal:

Direct examination by plaintiff's counsel:

Q. From the time you got on these platforms—the platforms between the smoking car and the passenger car—until you left it, were you in any other part of the train?

A. No, sir.

Q. Did you stay continuously on those platforms?

A. Yes, sir; I stood right by the door.

Q. Now, how many persons were there to your knowledge on those platforms that you can name?

A. Bailey Lloyd, John Lloyd, Selden Walker, Frank Chisholm, John Walsh and myself.

Q. How do you know Frank Chisholm was there?

A. Because I was talking to him.

Q. How long did he stay there?

A. Until we got off at Brick Church.

Q. What kind of ticket did you give?

A. I gave a ticket from Newark to Brick Church—
an excursion ticket?

Q. Do you know what kind of ticket Chisholm
gave; did you see him give a ticket?

A. I did not.

Q. What is the color of the Brick Church excur- 10
sion ticket?

A. I believe it was blue.

Q. (By the COURT.) Was your ticket that you
gave that evening an excursion ticket?

A. Yes, sir.

Q. To Brick Church?

A. Yes, sir.

Further direct :

20

Q. Do you know what color it was?

A. I believe that is the color (producing ticket.)
That is a ticket to East Orange; the one I had that
night was a Brick Church ticket.

Q. Now of those persons that were there, how
many got off at Roseville?

A. That I could not say.

Further direct :

Q. You were busy talking with Frank Chisholm, I 30
understand you to say?

A. Yes, sir.

Q. Frank got off at Brick Church?

A. He got off with me.

Q. You say you gave an excursion ticket to Brick
Church—half of it?

A. Yes, sir.

Q. And it is colored like that to your recollection?
(exhibiting ticket to witness.)

A. Yes, sir.

40

Q. Those stations are very close together?

A. They are.

Q. So that sometimes you get off at East Orange and sometimes at Brick Church?

A. No, sir; I always get off at Brick Church when I lived there.

Q. Now you have changed your residence and live at East Orange?

A. Yes, sir.

10 Q. Last May you lived at Brick Church?

A. Yes, sir.

Not cross-examined.

JOHN F. WALSH, a witness heretofore produced in behalf of the plaintiff, recalled in rebuttal:

Direct examination by plaintiff's counsel:

20 Q. Were you the owner of a ticket to Roseville on the night of May 10 last?

A. No, sir.

Q. Have you ever, to your knowledge, bought a ticket to Roseville?

A. I never bought one; I never handled one; I never seen one in my life to my knowledge.

Q. (By the COURT.) You hadn't one that evening?

A. No, sir.

30 Q. Had you any other ticket with you that evening?

A. No, sir. I had the ticket I bought and I held it in my hand from the time I bought it until I gave it to the conductor.

Q. And you had no other ticket?

A. No, sir.

Q. How many persons got off of the platform at Roseville?

A. I could not say, sir.

40 Q. (By defendants' counsel.) You stood there all the time?

A. Yes, sir, I stood there all the time.

Plaintiff rests.

AUGUSTUS W. REED, recalled on behalf of the defendant, on rebuttal:

10

Direct examination by defendants' counsel:

Q. You stated on the stand there were no other blue tickets on your route—sold to any of the stations on your route—this gentleman produced here part of a ticket to some station that is nearly the same color. Just explain that?

A. I had reference to straight tickets—one class of tickets—as Mr. Walsh claimed he had a straight ticket; it was in reference to that; the excursion ticket is a different class of ticket.

20

Q. Do you know the difference easily?

A. Yes, sir.

Q. Are they the same color exactly?

A. They are a different shape altogether.

Q. Just explain to the jury the difference between the tickets in color and size?

A. That is what I call the straight tickets (Exhibit 4,) the same class of ticket Mr. Walsh claims that he bought and paid 12 cents for is a straight ticket; that is a straight ticket also to Roseville, a 5c. ticket; 30 the Orange and Brick Church tickets are white, and we call them straight tickets; these are excursion tickets and entirely different in their shape and size; a gentleman in the business, a conductor, can see the difference.

Q. (By the COURT.) I understand you to say the excursion tickets all along there are a blue color?

A. Yes, sir; the Newark half—the half from Newark to Orange—the other is yellow, but they are good in either direction.

40

Q. I understand you to say that the difference is in the size and in the fact that the excursion tickets are white on the back?

A. Yes, sir.

Q. And these other tickets are blue on both sides?

A. Yes, sir.

Q. That is the difference between them?

A. Yes, sir; the reason I didn't explain that before was, I was talking of one class of tickets.

10 Q. Those are specimens of each?

A. Yes, sir.

Cross-examination by plaintiff's counsel:

Q. Mr. Reed that is the color of one half of the excursion ticket to Grove street, Arlington avenue, Brick Church?

A. Some of them are a little darker blue.

Q. I am talking about the general color; as people recognize color.

20 A. Yes, sir.

Q. Do you mean to tell me you can tell by the difference of shape the difference between the Arlington avenue and East Orange half by the shape?

A. No, sir, not by the shape.

Q. When you talk about the shape, it is not any means by which you can determine the character of the ticket?

A. No, sir.

30 Q. Now you said on your direct examination that you knew these Roseville tickets by their color—Is that so or not?

A. By their color and the reading of them.

Q. You said "by their color;" is that what you tell them by?

A. By the color and reading of them; I had no reference to excursion tickets.

Q. Did you get no excursion tickets on that platform that night?

A. I would not say positively.

Q. Now you said there were five people on that platform?

A. Yes, sir.

Q. If you got three Roseville tickets you got only two other tickets, didn't you?

A. Yes, sir.

A small time-table of the Orange and Newark Horse Car Company offered in evidence and marked Exhibit No. 1. 10

Also, a large time-table of the Orange and Newark Horse Car Company offered in evidence and marked Exhibit No. 2.

Also, time-table of the Morris and Essex Rail Road Company, marked Exhibit No. 3.

Also, rail road ticket from Newark to Roseville, marked Exhibit No. 4. 20

Also, rail road ticket from Newark to Brick Church marked Exhibit No. 5.

Rail road ticket from Newark to Orange marked Exhibit No. 6.

Half an excursion ticket between Newark and East Orange offered in evidence and marked Exhibit B. 30

Case closed.

ESSEX COUNTY CIRCUIT COURT.

DECEMBER TERM, 1884.

JOHN F. WALSH,	}
vs.	
THE DEL., LACK. AND WEST.	
R. R. Co.	

10

REQUESTS TO CHARGE.

Plaintiff's counsel requested the Court to charge the jury as follows :

FIRST. When an order to leave a train is accompanied with such a demonstration of force as to impress the plaintiff with the apprehension that it would be employed, and he is thereby compelled to leave
20 the train, it is equivalent to the use of force.

SECOND. That the company is liable for the wrongful ejection of the plaintiff, although the conductor acted in good faith.

THIRD. That although the plaintiff did not wait until force was actually used before leaving the train, in estimating the damages, the jury are to give the plaintiff compensation covering the loss of
30 time and inconvenience occasioned him, and the indignity to his feelings which the plaintiff may have suffered.

Defendants' counsel requested the Court to charge the jury as follows :

FIRST. That there can be no vindictive or punitive damages given under the evidence in the case.

40 SECOND. If the jury believe the testimony of the

conductor, Reed, and the brakeman, Boyle, the verdict must be for the defendants.

THIRD. If the jury believe that the conductor was mistaken, then the verdict can only be for the actual damages suffered by Walsh : namely, the price of his ticket, what it cost him to get home, and any other money loss to which he was actually put, and the inconvenience of walking home.

FOURTH. That there is no evidence in the case showing malice on the part of the conductor. 10

FIFTH. That in order to justify any damages there must appear to have been unlawful ejection.

SIXTH. That in order to justify any damages other than merely compensatory, there must have been an ejection, not only unlawful but forcible.

SEVENTH. That there can be no damages by way of punishment or smart money. 20

EIGHTH. That there can be no damages in this case based upon any circumstances of indignity.

ESSEX COUNTY CIRCUIT COURT.

DECEMBER TERM, 1884.

JOHN F. WALSH,

vs.

10 THE DELAWARE, LACKAWANNA & WEST-
TERN RAIL ROAD CO. }

CHARGE OF THE COURT.

DEPUE, J.—

GENTLEMEN OF THE JURY—Counsel have treated this case as an action of tort for the wrongful ejection of the plaintiff from the cars of the defendant. Trespas
20 pass as distinguished from an action to recover damages for the simple non-performance of contract; the form of the action, and its nature, in one or two respects, will be of importance in this case; I will direct attention to these matters in the course of my instructions to the jury.

The evidence shows that on the evening of the 10th of May last, the plaintiff took passage at the Broad street station, in the City of Newark, on a train of the defendants. It also shows that he expected to
30 ride in that train to Orange. The evidence also shows that when the train reached Grove street station, he was required to leave the car; did leave it and walked home. The plaintiff contends that he had a right to be carried to Orange, and he claims that he was wrongfully and forcibly ejected from the car at Grove street. These are the two questions on which your verdict rests.

In order to entitle a person to a ride on the cars of a railroad, and to remain there, two things must
40 concur. In the first place he must have a ticket

that entitles him to go to a place to which he desires to go ; and, in the second place, whenever he is required by the conductor to exhibit the evidence of his right to ride, he is bound to produce it in order to justify his right to be upon the train. But if a passenger has a ticket that entitles him to a ride to the place to which he desires to go, and if he exhibits it to the conductor, and afterwards is forcibly ejected from the car, then he has a right to bring a suit and recover damages. 10

Now, that the plaintiff in this case bought a ticket on that evening for Orange, is not disputed, it is proved by every witness who has spoken on that subject. When he got on that train, having in his possession that which entitled him to a ride to Orange, did he, when he was called upon by the conductor to exhibit his right to ride to Orange, exhibit that ticket, or a ticket to Roseville? That is the first controverted question in the case. If he had the Orange ticket and gave it up to the conductor between Newark and Roseville, where these tickets are taken up, then his ejection from the train would be unlawful. If he bought a ticket for Orange, and had it in his possession, and when the conductor came for the ticket between Newark and Roseville, gave a Roseville ticket, then, not having exhibited the Orange ticket, he could not be considered as riding on the right that that ticket gave him, and he would have been subject to be excluded from the train. That is the first controverted question of fact in the 30 case. The plaintiff testifies that he gave to the conductor the Orange ticket that he bought ; he testifies also, that he had no Roseville ticket and that he had never seen one—I think, never had one—and that he had no other ticket with him that evening but the Orange ticket he bought at Newark. That is the evidence on which the plaintiff relies as proof of the fact that he exhibited to the conductor the Orange ticket. On the other hand, you have the testimony of the conductor that he received 40

from this plaintiff, not an Orange ticket, but a ticket that entitled him to a ride only to Roseville. Now, which one of these statements represents the truth? The conductor, for the purpose of confirming his own testimony on that subject, relies upon the fact that he exhibited to his brakeman three tickets for Roseville, and that he pointed out the plaintiff, who was sitting there on the platform, with his feet on the steps, as one of the persons who gave a Roseville
 10 ticket; and in order to further confirm his testimony, so far as to show that his attention was called to the subject, there is proof in the case that the conductors on those evening trains were required to exercise unusual diligence in order to prevent persons who were in the habit of riding beyond Roseville, from riding on tickets that were issued to Roseville only.

On the other hand, the plaintiff in order to confirm his testimony, has produced persons who
 20 testified that they rode on one or the other of those platforms until the train reached Roseville, and that of the persons on those platforms, only one got off at Roseville, and that the remainder of them had tickets that entitled them to a ride to Orange; and therefore the contention is that the conductor, when he exhibited these tickets for Roseville as the tickets he got from the persons who stood on the platform, was laboring under a mistake. It will be for the jury to settle, from the
 30 evidence, what the fact was in relation to the exhibition of the ticket by the plaintiff. Was it the Orange ticket that he gave up to the conductor, or was it a Roseville ticket? If it was the Orange ticket he was entitled to a ride to Orange; if a Roseville ticket, then, gentlemen, his ejection was lawful. If you conclude from the evidence that the plaintiff not only had a ticket for Orange, but that he exhibited that ticket to the conductor; then the next controverted question of fact in the case is whether there
 40 was any forcible ejection from the train.

The testimony on the part of the plaintiff is that when the conductor directed him to leave the cars at East Orange, and told him he had a ticket only for Roseville, he told the conductor that he bought a ticket for Orange, and that he could prove it; and that the conductor standing near enough to eject him, several times directed him to leave, and, one of the witnesses says, used a gesture that would indicate an intent to carry that purpose into execution.

If you believe that that was done, and that the 10 plaintiff, although he was not touched by the conductor, under a well-grounded apprehension that the conductor, if he did not leave the cars, would put his command in force by forcibly ejecting him, then my instruction to you is, that that was a sufficient exercise of force to support an action of this kind. A man is not bound to fight; if he submits when force is threatened, and threatened under such circumstances as to satisfy a jury that there was a well-grounded apprehension that force would be applied 20 if he did not yield, he yields to force, and his ejection would be forcible.

On the other side, the testimony on the part of the conductor, and on the part of the brakeman is, that no such threat as that was used; that the conductor was notified by the brakeman that the plaintiff did not get off at Roseville; that he came through the car; that when he reached the front of the car where the plaintiff was sitting, the train had about reached Grove street station, and 30 he then said to the plaintiff, "Your ticket was for Roseville, and you must get off," and that the plaintiff, without saying a word, without saying "I have a ticket for Orange," peaceably and quietly got off of the cars. If you accept that version of what occurred at the time this plaintiff left the train, then there was no forcible ejection; there was simply a submission to a request, without any claim on the part of the plaintiff of a right to ride any further. That is the

other controverted question of fact you are to settle in this case.

If you find that question in favor of the plaintiff, and find that he exhibited to the conductor the Orange ticket, then the plaintiff will be entitled to a verdict. If, on the other hand you find that the ticket that was given to the conductor was a Roseville ticket, or that the plaintiff left the car under the circumstances detailed by the conductor and the
10 brakeman,—of his own volition, without making any claim to ride further,—then the defendant is entitled to a verdict.

If you decide both of these contested questions of fact in favor of the plaintiff, then the plaintiff will be entitled to recover damages, and the law furnishes no rule for admeasuring damages in a case of this kind, except that damages are to be limited to such sum as would be compensation for the injury the plaintiff received.

20 There is a class of cases where the law allows the jury to go beyond compensation and give what is known as vindictive, punitive damages ; but where a jury is authorized to resort to that method of punishing a defendant, there must be evidence tending to show that the conduct of the defendant was either malicious or wilfully oppressive. There is no such evidence in this case ; the damages to be given to the plaintiff, in case you find a verdict for him, are for compensation. In that you may consider the
30 circumstances under which the plaintiff was situated at the time he left this train ; he was three-quarters of a mile from his own house ; he walked that distance. Now it is said on the part of the defendants, that he might have paid five cents fare and remained in that car. He was under no obligation to do that. If he had procured and exhibited the proper ticket, that entitled him to a ride to Orange, he was entitled to ride on that ticket, and when the conductor repudiated that contract and ejected him from the cars
40 by force, if he did, the plaintiff was under no obliga-

tion to pay his fare and remain in the train; nor was he under any obligation to remain at that depot until the next train left. He could not take such steps to enhance his damages as a jury might consider unreasonable, but if he did what, in the estimation of the jury, was a reasonable and proper method of extricating himself from the dilemma in which he was placed, the jury may, in estimating damages, consider that what was done as the basis on which damages are to be considered. 10

He might, it is said on the part of the defendants, have taken the horse cars. My recollection of the evidence is that the plaintiff testified that he walked up the same street that the horse cars ran upon, and that none were in sight, and he had no opportunity to ride. You are to consider whether what he did that evening was a reasonable method of relieving himself from the situation he was in, or whether it was done with the object of enhancing damages.

Besides compensation for the injury that the 20 plaintiff received from the fact that he was left at that time of night at that station, you may give an additional sum as part of your compensation, by way of damages for the indignity and consequent injury to his feelings in being required to leave the train under the circumstances in which he left it. That rule of damages is settled to be a proper rule by the Court of Errors in a recent case decided in that Court, that where a person is on a car or ferry-boat, having paid his fare, and entitled, 30 consequently, to a ride, if he is wrongfully ejected, the jury may, in awarding damages, allow him a reasonable sum as compensation for the indignity and consequent injury to his feelings in being thus treated. That is the rule of damages that is now settled by the decision of the highest Court in the State.

Defendants' counsel prayed exception to the refusal of the Court to charge as requested, and to what the Court did charge in place thereof.

10 Defendants' counsel also prayed exception to that part of the charge which states in substance that, although the plaintiff was not touched, yet if he left the cars under a well-grounded apprehension that the conductor would put his command in force, by forcible ejection, then it was a sufficient exercise of force to justify a recovery in this case.

Also to that part of the charge which states that the plaintiff was under no obligation to pay his fare in that train and remain there after the conductor ordered him to leave.

20 Also to that part of the charge which states that the plaintiff was under no obligation to remain at the depot for another train.

Also to that part of the charge which allows the jury to consider that what he did in going home as he did, was reasonable and a proper basis of damages.

30 Also to that part of the charge which states in substance that in addition to compensation for injury, the jury should give such sum as part of their compensation for damages for the indignity and consequent injury to his feelings, in being requested to leave the train as he did; that is, that they can give a reasonable sum as compensation for the indignity and consequent injury to his feelings, and that that is the rule now settled in the highest Court in this State.

40 Also to that part of the charge which states that if the jury believe that there was an ejection

tion in fact as stated, and that he had paid his fare to Orange, and did not present a Roseville ticket, that then there can be recovery in this case.

And the said Judge, in his charge to the jury charged as follows: "If you believe that that was done and that the plaintiff although he was not 10 touched by the conductor was under a well grounded apprehension that the conductor, if he did not leave the cars, would put his command in force by forcibly ejecting him, then my instructions to you are that that was a sufficient ejection by force to sustain an action of this kind. A man is not bound to fight. If he submits when force is threatened and threatened under such circumstances as to satisfy a jury, then there was a well grounded apprehension that force would be applied if he did not yield, he yields 20 to force and his ejection would be forcible."

To which charge of the said Judge the defendants, by their counsel, excepted and prayed that this, their bill of exceptions might be sealed, and it is sealed accordingly.

DAVID A. DEPUE, J. [L. S.]

The said Judge, in charging the jury, further said: "In that you may consider the circumstances under 30 which the plaintiff was situated at the time he left this train. He was three-quarters of a mile from his own house. He walked that distance. Now it is said, on the part of the defendants, that he might have paid five cents fare and remained in that car. He was under no obligation to do that. If he had procured and exhibited the proper ticket, that entitled him to a ride to Orange, he was entitled to ride on that ticket, and when the conductor repudiated that contract and ejected him from the cars by 40

force, if he did, the plaintiff was under no obligation to pay his fare and remain in the train."

To which charge of the said Judge the defendants, by their counsel excepted and prayed that this their bill of exceptions might be sealed; and it is sealed accordingly.

DAVID A. DEPUE, J. [L. S.]

The said Judge proceeding further, charged the
 10 said jury as follows: "Nor was he under any obligation to remain at the depot until the next train left. He could not take such steps to enhance his damages as a jury might consider unreasonable; but if he did what in the estimation of the jury was a reasonable and proper method of extricating himself from the dilemma in which he was placed, the jury may in estimating damages consider what was done as the basis on which damages are to be considered. He might it is said on the part of the defendants,
 20 have taken the horse cars. My recollection is, that the plaintiff testified that he walked up the same street that the horse cars ran upon, and that none were in sight, and that he had no opportunity to ride. You are to consider whether what he did that evening was a reasonable method of relieving himself from the situation he was in, or whether it was done with the object of enhancing damages."

To which charge of the said Judge the defendants
 30 by their counsel excepted, and prayed that this their bill of exceptions might be sealed, and it is sealed accordingly.

DAVID A. DEPUE, J. [L. S.]

The said Judge further charged the jury as follows:
 "Besides compensation for the injury that the plaintiff received from the fact that he was left at that time of night at that station, you may give an additional sum as part of your compensation by way of
 40 damages for the indignity and consequent injury to

his feelings in being required to leave the train under the circumstances which he left it."

To which charge of the said Judge, the defendants by their counsel excepted and prayed that this, their bill of exceptions, might be sealed, and it is sealed accordingly.

DAVID A. DEPUE, J. [L. S.]

The said Judge further charged the jury as follows: "That rule of damages is stated to be the proper rule in the Court of Errors in a recent case decided in that court, that where a person is on a car or ferry boat, having paid his fare and entitled consequently to a ride, if he is wrongfully ejected, the jury may, in awarding damages, allow a reasonable sum as compensation for the indignity and consequent injury to his feelings in being thus treated. That is the rule of damages that is now settled by the decision of the highest Court in the State." 10

To which charge of the said Judge, the defendants by their counsel excepted and prayed that this, their bill of exceptions might be sealed, and it is sealed accordingly. 20

DAVID A. DEPUE, J. [L. S.]

The said Judge in his said charge after having recited the testimony on both sides, as to whether the said plaintiff was directed by the conductor to leave the train, and although he was not touched was under a well grounded apprehension that the conductor if he did not leave the train would put his command in force by forcibly ejecting him, or whether the plaintiff peaceably and without remonstrance left the cars upon being told by the conductor at Grove street station "your ticket was for Roseville and you must get off," further charged the jury as follows: "If you find that question in favor of the plaintiff and find that he exhibited to the conductor the Orange ticket, then the plaintiff will be entitled to a verdict." 30 40

To which charge of the said Judge the defendants, by their counsel, excepted and prayed that this their bill of exceptions might be sealed and it is sealed accordingly.

DAVID A. DEPUE, J. [L. S.]

That at the same time the said defendants by their counsel further requested the said Judge to charge
 10 the jury as follows: "If the jury believe that the conductor was mistaken, then the verdict can only be for the actual damages suffered by Walsh, namely, the price of his ticket, what it cost him to get home and any other money loss to which he was actually put, and the inconvenience of walking home."

But to so charge the said Judge refused; to which refusal the defendants by their counsel excepted and prayed that this their bill of exceptions might be
 20 sealed; and it is sealed accordingly.

DAVID A. DEPUE, J. [L. S.]

That at the same time the said defendants by their counsel further requested the said Judge to charge the jury as follows: "That in order to justify any damages other than merely compensatory, there must have been an ejection not only unlawful, but forcible." But to so charge, the said Judge refused
 30 to so charge otherwise than charged, to which refusal, the defendants by their counsel excepted and prayed that this their bill of exceptions might be sealed, and it is sealed accordingly.

DAVID A. DEPUE, J. [L. S.]

That at the same time the said defendants, by their counsel, further requested the said Judge to
 40 charge the jury as follows: "That there can be no

damages in this case based upon any circumstances of indignity." But to so charge, the said Judge refused otherwise than charged; to which refusal the defendants, by their counsel, excepted and prayed that this their bill of exceptions might be sealed, and it is sealed accordingly.

DAVID A. DEPUE, J. [L. S.]

The foregoing exceptions were signed and sealed¹⁰ subject to any qualifications contained in the charge as delivered.

DAVID A. DEPUE, J.

20

30

40

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, Plaintiffs in Error,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOHN F. WALSH, Defendant in Error.</p>	<p style="text-align: center;">In Error to Essex Circuit</p> <hr style="width: 20%; margin: 0 auto;"/> <p style="text-align: center;">Assignment of Errors.</p>
----	---	---

Afterwards, that is to say, on the thirteenth day of March, in the year of our Lord one thousand eight hundred and eighty-five, in the Supreme Court of Judicature of the State of New Jersey, come the said 20 The Delaware, Lackawanna and Western Railroad Company, by Bedle, Muirheid & McGee, their attorneys, and say, that in the matters recited and contained in the said bill of exceptions, and also in giving the judgment aforesaid, there is manifest error in this, to wit :

FIRST. That at the trial of said cause at the Circuit, when the plaintiff had rested his case, the said 30 defendants, by their counsel, moved for a judgment of nonsuit in said cause against the plaintiff and in favor of the defendants, to grant which motion the said Judge who tried the cause refused, and permitted the cause to go to the jury.

SECOND. That the said Judge, who tried said cause at the trial thereof, ruled out legal evidence offered by the defendants, to which rejection the defendants, by their counsel objected, and by which 40 the defendants were injured.

THIRD. That at the trial of said cause, the Judge who tried the same, ruled out legal evidence offered by the defendants against the will of the defendants, and to their injury, in that he ruled out the following question put to the witness, John Long, and his answer thereto, namely: Question. "Do you have
 " sometimes, Roseville tickets offered you by people,
 " and then they attempt to ride further?" Answer.
 " Very nearly every night in the week," pro ut the
 said question and answer and the context thereof. 10

FOURTH. That at the trial of said cause, the said defendants by their counsel, asked of the witness, John Long, the following question: "Do you have, some-
 " times, Roseville tickets, offered you by people, and
 " then they attempt to ride further?" To which the
 witness answered: "Very nearly every night in the
 " week." To which question and answer the plaintiff,
 by his counsel, objected, which objection was sus-
 tained, and thereupon defendants, by their counsel, 20
 offered to call other witnesses to the same effect, to
 wit, to the effect that it was a frequent occurrence
 for passengers to offer Roseville tickets to the con-
 ductors, and then attempt to ride further.

Which offer to call other witnesses and to prove
 by other witnesses the fact in question, the said
 Judge at the Circuit rejected and refused to admit
 the said evidence, by which refusal the defendants
 were injured.

30

FIFTH. That at the trial of said issue the said
 Judge charged the jury as follows: "If you believe
 " that that was done, and that the plaintiff, although
 " he was not touched by the conductor, was under a
 " well grounded apprehension that the conductor, if
 " he did not leave the cars, would put his command
 " in force by forcibly ejecting him, then my instruc-
 " tion to you is, that that was a sufficient exercise of
 " force to support an action of this kind. A man is
 " not bound to fight; if he submits when force is 40

“ threatened, and threatened under such circumstances as to satisfy a jury that there was a well grounded apprehension that force would be applied if he did not yield, he yields to force, and his ejection would be forcible.”

SIXTH. That it was testified in said cause on behalf of the plaintiff to the effect that the plaintiff procured a ticket to Orange; that between Newark and
10 Roseville be delivered the same to the conductor; that at the next station beyond Roseville the conductor requested the plaintiff either to pay his fare or to procure a new ticket or to leave the train.

It was testified on behalf of the defendants that the plaintiff gave to the conductor a ticket to Roseville and did not give him a ticket to Orange, and that under those circumstances he made the request aforesaid *pro ut* the said testimony.

In view of this testimony, the said Judge, at the
20 trial of said issue, charged the jury as follows: “It is said on the part of the defendants, that he (meaning the plaintiff) might have paid five cents fare and remained in that car. He was under no obligation to do that. If he had procured and exhibited the proper ticket that entitled him to a ride to Orange, he was entitled to ride on that ticket, and when the conductor repudiated that contract and ejected him from the cars by force, if he did, the plaintiff was under no obligation to pay his fare and remain
30 “ in the train.”

SEVENTH. That the said Judge at the trial of said cause charged the jury as follows: “ nor was he under any obligation to remain at that depot until the next train left. He could not take such steps to enhance his damages as a jury might consider unreasonable, but if he did what, in the estimation of the jury, was a reasonable and proper method of extricating himself from the dilemma in
40 “ which he was placed, the jury may, in estimating

“damages consider that what was done as the basis
 “on which damages are to be considered. He might,
 “it is said on the part of the defendants, have
 “taken the horse cars. My recollection of the evi-
 “dence is that the plaintiff testified that he walk-
 “ed up the same street that the horse cars ran
 “upon, and that none were in sight, and he had no
 “opportunity to ride. You are to consider whether
 “what he did that evening was a reasonable method
 “of relieving himself from the situation he was in, 10
 “or whether it was done with the object of enhanc-
 “ing damages.”

EIGHTH. That at the trial of said issue said
 Judge charged the jury as follows: “Besides
 “compensation for the injury that the plaintiff re-
 “ceived from the fact that he was left at that time
 “of night at that station, you may give an additional
 “sum as part of your compensation, by way of
 “damages for the indignity and consequent injury 20
 “to his feelings in being required to leave the train
 “under the circumstances in which he left it.”

NINTH. That the said Judge who tried the said
 issue charged the jury as follows: “That rule of
 “damages is settled to be a proper rule by the Court
 “of Errors in a recent case decided in that Court,
 “that where a person is on a car or ferry boat, hav-
 “ing paid his fare, and entitled, consequently, to a 30
 “ride, if he is wrongfully ejected, the jury may, in
 “awarding damages, allow him a reasonable sum
 “as compensation for the indignity and consequent
 “injury to his feelings in being thus treated. That
 “is the rule of damages that is now settled by the
 “decision of the highest Court in the State.”

TENTH. That the said Judge who tried the said
 issue, after having recited the testimony on both sides
 as to whether the said plaintiff was directed by the
 conductor to leave the train, and although he was 40

not touched, was not under a well grounded apprehension that the conductor, if he did not leave the train would put his command in force by forcibly ejecting him, or whether the plaintiff peaceably and without remonstrance left the cars upon being told by the conductor at the Grove street station, "Your ticket was for Roseville, and you must get off," further charged the jury as follows: "If you find that
 10 "question in favor of the plaintiff, and find that he
 "exhibited to the conductor the Orange ticket, then
 "the plaintiff will be entitled to a verdict."

ELEVENTH. That, at the trial of said issue, the defendants, by their counsel, requested the Judge who tried said issue to charge the jury as follows: "If the
 "jury believe that the conductor was mistaken, then
 "the verdict can only be for the actual damages suffered by Walsh, namely, the price of his ticket,
 "what it cost him to get home and any other money
 20 "loss to which he was actually put, and the inconvenience of walking home." To comply with which request to charge the jury, the said Judge refused.

TWELFTH. That at the trial of said issue the defendants, by their counsel, requested the said Judge who tried said issue, to charge the jury as follows: "That, in order to justify any damages other than
 "merely compensatory, there must have been an
 "ejection not only unlawful, but forcible;" to comply with which request to charge, the said Judge refused to charge other than as charged.
 30

THIRTEENTH. That at the trial of said issue, the defendants, by their counsel, requested the said Judge who tried said issue, to charge the jury as follows: "That there can be no damages in this case
 "based upon any circumstances of indignity;" to comply with which request to charge, the said Judge refused other than as charged.
 40

FOURTEENTH. That said action was, by amendment at the trial, in trespass, whereas it should have been either in assumpsit or trespass on the case.

FIFTEENTH. That the verdict in said cause was in favor of the plaintiff, whereas by the law of the land it ought, under the circumstances of the case, to have been for the defendants.

SIXTEENTH. That judgment was entered in said 10 cause in favor of the plaintiff, whereas by the law of the land said judgment ought to have been entered in favor of the defendants therein.

Therefore the said The Delaware, Lackawanna and Western Railroad Company pray that the judgment aforesaid, by reason of the errors aforesaid, may be reversed, annulled and for nothing holden, and that the said The Delaware, Lackawanna and Western Railroad Company may be restored in all things what they have lost on the occasion of the said judgment, 20 and that John F. Walsh may rejoin to the said errors.

BEDLE, MUIRHEID & MCGEE,
Attys. of the Plaintiffs in Error.

Usual joinder in error.

30

40

Uvni jounha in orna.

NEW JERSEY, SS.

The State of New Jersey to the Chief
 [L. S.] Justice and other Justices of our Supreme
 Court of Judicature Greeting :

For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint,¹⁰ which was in our said Supreme Court of Judicature before you, between The Delaware, Lackawana and Western Rail Road Company, plaintiff in error, against John F. Walsh, defendant in error, in a plea of trespass, brought by writ of error into that court from the Circuit Court of the county of Essex, manifest error hath intervened to the great damage of the said The Delaware, Lackawana and Western Rail Road Company, as is said; we being willing that the error if any there be should in due manner, be cor-²⁰rected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed then you do distinctly and openly send under your seal the record and proceeding aforesaid with all things touching the same, to our judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fifth Tuesday of June instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further³⁰ done thereupon, for correcting that error, what of right, and according to the law and custom of the State of New Jersey ought to be.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid the tenth day of June, in the year of our Lord one thousand eight hundred and eighty-five.

HENRY C. KELSEY,

Clerk.

BEDLE, MUIRHEID & MCGEE,

Attorneys.

The answer of the Chief Justice and other Justices of the Supreme Court within named ; the record and proceedings of the plea whereof mention is within named, with all things concerning the same, to the Court of Errors and Appeals in the last resort in all causes within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

10

M. BEASLEY, Ch. Jus.

NEW JERSEY, SS.

And hereupon comes Edward M. Colie, Attorney of John F. Walsh, the defendant in error, and says :

That there is no error, either in the record and
 20 proceedings, or in the giving of judgment aforesaid; and in the behalf of John F. Walsh, he prays the Supreme Court of our State, before the Justice thereof here, may proceed to examine as well the record and proceedings aforesaid, assigned for error and the judgment aforesaid given, may in all things be affirmed, etc.

EDWARD M. COLIE,

Atty. for Deft. in Error.

30 But because our said Supreme Court now here are not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid to wit, until the first Tuesday of June, A. D. eighteen hundred and eighty-five, to hear the judgment of the said Court thereupon, at which day before said court at Trenton come the said parties aforesaid, by their attorneys aforesaid.

Whereupon all and singular the premises being seen and by the court were here fully understood,
 40 and as well the record and proceeding aforesaid, and

the judgment given in form aforesaid, as the matters aforesaid by the said The Delaware, Lackawanna and Western Rail Road Company above for error assigned, being diligently examined and inspected, and mature deliberation being thereupon had, it appears to our said court now here, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and that said writ of error should be dismissed.

Therefore it is considered that the judgment aforesaid, in form aforesaid given be in all things affirmed and stand in full force and effect the said causes and matters above for error assigned in any issue notwithstanding. ¹⁰

And it is further considered that the said John F. Walsh do recover against the said The Delaware, Lackawanna and Western Rail Road Company, as well his damages aforesaid as also forty dollars and sixty-eight cents for his damages, double costs and charges which he hath sustained and expended by reason of delay of execution of the judgment aforesaid, on pretense of prosecuting the said writ of error by our said Supreme Court now here adjudged to the said John F. Walsh and with his assent, according to the form of the statute in such case made and provided, and that the said John F. Walsh have execution thereof, &c. ²⁰

Judgment signed this fifteenth day of June, A. D. eighteen hundred and eighty-five.

M. BEASLEY, ³⁰
Ch. Jus.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	<p>THE DELAWARE, LACKAWANNA & WESTERN RAIL ROAD COMPANY, Plaintiffs in Error,</p> <p style="text-align: center;">vs.</p> <p>JOHN F. WALSH, Defendant in Error.</p>	<p>In Error to Supreme Court.</p> <p>Assignment of Errors.</p>
----	--	--

Afterwards that is to say, on the thirtieth day of June, in the year of our Lord one thousand eight hundred and eighty-five, in the Court of Errors and Appeals in the last resort in all causes in New Jersey come the said The Delaware, Lackawanna & Western Rail Road Company, by Bedle, Muirheid & McGee, their attorneys, and say that in the matters recited and contained in the said bill of exceptions, and also in the record and giving of judgment aforesaid there is manifest error in this to wit:

FIRST. That at the trial of said cause at the Circuit when the plaintiff had rested his case the said defendants by their counsel moved for a judgment of nonsuit in said cause against the plaintiff and in favor of the defendants, to grant which motion the the said judge who tried the cause refused, and permitted the cause to go to the jury.

SECOND. That the said judge who tried said cause at the circuit, at the trial thereof ruled out legal evidence offered by the defendants, to which rejection

the defendants by their counsel objected, and by which the defendants were injured.

THIRD. That at the trial of said cause at the circuit, the judge who tried the same ruled out legal evidence offered by the defendants against the will of the defendants and to their injury, in that he ruled out the following question put to the witness John Long, and his answer thereto, namely, "Question. Do you have sometimes Roseville tickets offered¹⁰ you by people and then they attempt to ride further? Answer. Very nearly every night in the week." *pro ut* the said question and answer and the context thereof.

FOURTH. That at the trial of said cause at the circuit the said defendants by their counsel, asked of the witness John Long, the following question: "Do you have sometimes Roseville tickets offered you by people and then they attempt to ride further?" To²⁰ which the witness answered, "Very nearly every night in the week." To which question and answer the plaintiff by his counsel objected, which objection was sustained; and thereupon defendants by their counsel offered to call other witnesses to the same effect, to wit, to the effect that it was a frequent occurrence for passengers to offer Roseville tickets to the conductors and then attempt to ride further.

Which offer to call other witnesses and to prove by other witnesses the fact in question, the said³⁰ judge at the circuit rejected, and refused to admit the said evidence, by which refusal the defendants were injured.

FIFTH. That at the trial of said issue at the circuit the said judge charged the jury as follows: "If
" you believe that that was done, and that the plain-
" tiff, although he was not touched by the conduc-
" tor, was under a well grounded apprehension that
" the conductor, if he did not leave the cars, would⁴⁰

“put his command in force by forcibly ejecting him,
 “then my instruction to you is, that that was a suf-
 “ficient exercise of force to support an action of this
 “kind. A man is not bound to fight. If he submits
 “when force is threatened, and threatened under
 “such circumstances as to satisfy a jury that there
 “was a well grounded apprehension that force would
 “be applied if he did not yield, he yields to force,
 “and his ejection would be forcible.”

10

SIXTH. That it was testified in said cause at the
 circuit, on behalf of the plaintiff, to the effect that
 the plaintiff procured a ticket to Orange; that be-
 tween Newark and Roseville he delivered the same
 to the conductor; that at the next station beyond
 Roseville the conductor requested the plaintiff either
 to pay his fare or to procure a new ticket or to
 leave the train.

It was further testified on behalf of the defendants
 20 that the plaintiff gave to the conductor a ticket to
 Roseville and did not give him a ticket to Orange,
 and that under those circumstances he made the re-
 quest aforesaid, *pro ut* the said testimony. In view
 of this testimony, the said judge at the trial of said
 issue charged the jury as follows: “It is said on the
 “part of the defendants, that he (meaning the plain-
 “tiff) might have paid five cents fare and remained
 “in that car. He was under no obligation to do that.
 “If he had procured and exhibited the proper ticket,
 30 “that entitled him to a ride to Orange, he was en-
 “titled to a ride on that ticket, and when the con-
 “ductor repudiated that contract and ejected him
 “from the cars by force, if he did, the plaintiff was
 “under no obligation to pay his fare and remain on
 “the train.

SEVENTH. That the said judge at the trial of said
 cause at the circuit charged the jury as follows:
 “Nor was he under any obligation to remain at that
 40 “depot until the next train left. He could not take

"such steps to enhance his damages as a jury might
 "consider unreasonable, but if he did what in the
 "estimation of the jury, was a reasonable and proper
 "method of extricating himself from the dilemma in
 "which he was placed, the jury may, in estimating
 "damages consider that what was done as the basis
 "on which damages are to be considered. He might
 "it is said on the part of the defendants, have taken
 "the horse cars. My recollection of the evidence is
 "that the plaintiff testified that he walked up the¹⁰
 "same street that the horse cars ran upon, and that
 "none were in sight, and he had no opportunity to
 "ride. You are to consider whether what he did
 "that evening was a reasonable method of relieving
 "himself from the situation he was in, or whether it
 "was done with the object of enhancing damages."

EIGHTH. That at the trial of said issue at the cir-
 cuit said judge charged the jury as follows: "Be-²⁰
 "sides compensation for the injury that the plain-
 "tiff received from the fact that he was left at that
 "time of night at that station, you may give and ad-
 "ditional sum as part of your compensation, by
 "way of damages for the indignity and consequent
 "injury to his feelings in being required to leave
 "the train under the circumstances in which he left
 "it."

NINTH. That the said judge who tried the said is-³⁰
 sue at the circuit charged the jury as follows: "That
 "rule of damages is settled to be a proper rule by the
 "Court of Errors in a recent case decided in that court,
 "that where a person is on a car or ferry boat, hav-
 "ing paid his fare, and entitled consequently, to a
 "ride, if he is wrongfully ejected, the jury may, in
 "awarding damages, allow him a reasonable sum as
 "compensation for the indignity and consequent in-
 "jury to his feelings in being thus treated. That

“ is the rule of damages that is now settled by the
“ decision of the highest court in the state.”

TENTH. That the said judge who tried the said issue at the circuit, after having recited the testimony on both sides as to whether the said plaintiff was directed by the conductor to leave the train, and although he was not touched, was not under a well-grounded apprehension that the conductor if he did
10 not leave the train would put his command in force by forcibly ejecting him, or whether the plaintiff peaceably and without remonstrance left the cars upon being told by the conductor at the Grove street station, “ Your ticket was for Roseville and “ you must get off,” further charged the jury as follows: “ If you find that question in favor of the “ plaintiff, and find that he exhibited to the conductor the Orange ticket, then the plaintiff will be entitled to a verdict.”

20

ELEVENTH. That at the trial of said issue at the circuit, the defendants by their counsel requested the judge who tried said issue, to charge the jury as follows: “ If the jury believe that the conductor was “ mistaken, then the verdict can only be for the actual damages suffered by Walsh, namely, the price “ of his ticket, what it cost him to get home, and any “ other money loss to which he was actually put, “ and the inconvenience of walking home;” to comply
30 ply with which request to charge the jury the said judge refused.

TWELFTH. That at the trial of said issue at the circuit, the defendants by their counsel requested the said judge who tried said issue to charge the jury as follows: “ That in order to justify any damages “ other than merely compensatory, there must have “ been an ejection not only unlawful but forcible.” To comply with which request to charge the said
40 judge refused to charge other than as charged.

THIRTEENTH. That at the trial of said issue at the circuit the defendants, by their counsel requested the said judge who tried said issue to charge the jury as follows: "That there can be no damages in this case "based upon any circumstances of indignity." To comply with which request to charge the said judge refused other than as charged,

FOURTEENTH. That at the circuit said action was by amendment at the trial in trespass, whereas it¹⁰ should have been either in assumpsit or trespass on the case.

FIFTEENTH. That the verdict in said cause was in favor of the plaintiff, whereas by the law of the land it ought, under the circumstances of the case, to have been for the defendants.

SIXTEENTH. That judgment was entered in said cause at the circuit in favor of the plaintiff, whereas²⁰ by the law of the land, said judgment ought to have been entered in favor of the defendants therein.

SEVENTEENTH. That the record and proceedings in said cause were removed into the Supreme Court by writ of error, and the said court having considered the premises, and as well the record and proceedings aforesaid and the judgment aforesaid thereon given, as also the causes of error above assigned gave judgment that the judgment aforesaid, in form aforesaid³⁰ given, be in all things affirmed with double costs, whereas by the law of the land the said judgment of said Circuit Court ought to have been by said Supreme Court reversed, annulled and altogether for nothing holden and the plaintiffs in error be restored in all things which they have lost by occasion of said judgment.

EIGHTEENTH. That by the record aforesaid it appears that judgment in the form aforesaid, was given⁴⁰

by said Supreme Court for the said John F. Walsh against the said The Delaware, Lackawanna & Western Rail Road Company, whereas by the law of the land judgment ought to have been given by said Supreme court for the said The Delaware, Lackawanna & Western Rail Road Company against the said John F. Walsh.

NINETEENTH. That by the record aforesaid it appears that judgment was given by said Supreme Court for double costs in favor of said John F. Walsh and against the said The Delaware, Lackawanna & Western Rail Road Company, whereas by law, no costs should have been given against the said The Delaware, Lackawanna & Western Rail Road Company.

Therefore the said The Delaware, Lackawanna & Western Rail Road Company pray that the judgment of said Circuit Court aforesaid, by reason of the errors aforesaid, may be reversed, annulled and for nothing holden, and that the said The Delaware, Lackawanna & Western Rail Road Company may be restored in all things what they have lost on the occasion of the said judgment, and that John F. Walsh may rejoin to the said errors.

BEDLE, MUIRHEID, & MCGEE

Attorneys of the Plaintiffs in Errors.

30 *Usual ground in Error*