NEW JERSEY

Court of Errors and Appeals.

IDA H. GERETY, *Respondent*, *vs.* THE NEW JERSEY AND NEW YORK RAILROAD COMPANY, A CORPORATION, *Appellant.*	*On Appeal from the Supreme Court.*

Brief for Appellant.

1.

STATEMENT OF THE CASE.

This appeal is from a judgment of the Supreme Court affirming the judgment of the District Court of the Third Judicial District of Bergen County on the verdict of a jury in favor of the plaintiff-appellee (hereinafter called the plaintiff), and against the defendant-appellant (hereinafter called the defendant), in the sum of three hundred and two dollars and ninety cents, for the alleged negligent issuance of a commutation ticket, between Anderson Street, Hackensack, and New York, on August 1st, 1914. The ticket was taken up by one of the defendant's conductors on the 29th day of August, 1914, because it was issued to "*Mr. I. H. Gerety*," and was presented to him by the plaintiff, *Miss* I. H. Gerety, for transportation between the two points.

The question involved is whether or not the Supreme Court should have reversed the judgment

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for one or more of the reasons alleged in that Court.

2.

GROUNDS OF APPEAL.

The grounds of appeal are:

1. The Third Judicial District Court of the County of Bergen, over the objection of the defendant's counsel, admitted the two letters from R. W. Wallace, General Passenger Agent, marked P 3 and P 4, in evidence, whereas the said letters should not have been admitted.

2. The said Court over the objection of defendant's counsel refused to non-suit the plaintiff, whereas said non-suit should have been granted for one or more of the following reasons:

(a). It was the duty of the plaintiff to examine her ticket to see if it was properly issued to her and upon learning that it was not so issued it was her duty to return it to the agent and have that ticket corrected, or a new ticket issued in lieu thereof.

(b). That the plaintiff had the ticket for a long enough time to charge her in law with knowledge of the fact that the ticket was made out to a Mister, Mr., when it should have been made out to a Miss, and by not going back to the ticket agent, to have it corrected or have a new one issued, she was guilty of negligence in the using of the ticket.

3. The said Court erred in refusing to charge the following request submitted in behalf of defendant.

> "It was the duty of the plaintiff to examine the ticket, and upon discovering that it had been issued to 'Mr. I. H. Gerety' instead of 'Miss I. H. Gerety,' she should have returned the same to the ticket

> agent, and had him correct the mistake, or request him to issue a new one. Not having done so, she is not entitled to recover any damages."

Such refusal was error and prejudicial to defendant.

4. The said Court erred in refusing to charge the following request submitted in behalf of the defendant.

> "In considering the amount of damage sustained by the plaintiff, you must disregard any evidence introduced or attempted to have been introduced by the plaintiff to any conversation between her and the conductor, and you must limit your finding of any damage to the exact amount expended by the plaintiff for railroad fare after the commutation had been taken up by the conductor."

Such refusal was error and prejudicial to the defendant.

5. The said Court erred in refusing to charge the following request submitted in behalf of the defendant:

> "You must disregard any evidence introduced or attempted to be introduced, in arriving at your verdict, of any letters written by the General Passenger Agent of the defendant to the plaintiff, because the law is well settled that 'an offer made by one litigating party to the other is competent evidence for the latter, unless it is expressly stated that it is made without prejudice, or unless the party making it has been led to believe

> by the conduct of the adversary that a compromise may probably be effected.' Miss Gerety's visit to the General Passenger Agent of the defendant to see about the redemption of her ticket, is such conduct on her part as to lead the defendant to believe that a compromise may probably be effected."

Such refusal was error and prejudicial to the defendant.

6. The said Court erred in charging the jury, over the exception of the defendant's counsel, as follows:

> "You have a right in determining whether she used reasonable care or not; whether she was chargeable with anything more than she did, to consider the fact that it was stamped for twenty-seven or twenty-eight days after that on the regular train and passed."

7. The said Court erred in charging the jury, over the objection of the defendant's counsel, as follows:

> "She is not chargeable with using extra care; she is only chargeable with using ordinary care. Because she had a right when handing in her old ticket with her money and getting back change with request to hand her out a commutation ticket, to presume that it was a good ticket for her to travel on. Of course, that does not relieve her from ordinary care to see that it was a good ticket. And it is for you to say whether she used ordinary care."

8. The said Court erred in charging the jury, over the objection of the defendant's counsel, as follows:

> "In the first place, she is entitled to recover the money she paid out to permit her to go up and down week days and Sundays, because she had enough rides on this ticket left to have gone up and down seven days more trips than what she paid for. There were more trips than there were days in the month. Now, she is entitled to recover beside that for the indignity which she suffered by having her ticket taken away from her. She is entitled to recover for her feelings of distress and mental anguish that came from her being made a public spectacle, without the conductor saying anything to her; by the mere taking of the ticket away from her caused some commotion in the car, and besides that she is entitled to recover for a continuation of those feelings."

3.

BRIEF OF THE ARGUMENT.

I.

The Judge of the District Court erred in allowing the letters from R. W. Wallace, the General Passenger Agent, marked P 3 and P 4, to be admitted in evidence, and in refusing to charge the jury that they must disregard the letters written by him to the plaintiff.

(Specification 1, page 45).

(Specification 5, page 46).

The two letters from R. W. Wallace, General Passenger Agent of the defendant (page 41 of the State of the Case), should not have been admitted in evidence, because an unaccepted offer by way of compromise is not evidence against the party making it.

Miller v. Halsey, 14 N. J. L., 48.

Wrege v. Westcott, 30 N. J. L., 212.

Lehigh Valley Terminal Co. v. Currie, 54 N. J. Eq., 84.

Somerville Water Co. v. Borough of Somerville, 78 N. J. Eq., 199.

In Edwards v. Watertown, 13 N. Y. Supp., 309, evidence that an agent was authorized to offer a compromise was excluded.

Furthermore, the "General Passenger Agent" of the defendant is no more than what his title implies, viz., a mere agent of the defendant, and as such the fact that he offered a compromise should have been excluded in the absence of proof to show that he was authorized so to do.

It was error on the part of the Court to refuse this request, because the law is well settled that "an offer made by one litigating party to the other is competent evidence for the latter, unless it is expressly stated that it is made without prejudice, or unless the party making it has been led to believe by the conduct of the adversary that a compromise may probably be effected."

Richardson v. International Pottery Co., 63 N. J. L., 248.

The Supreme Court said that "These letters were within the scope of the authority of their writer." There was no proof that the writing of these letters

was within the scope of the authority of the General Passenger Agent of the defendant company.

It was conceded at the trial that these letters were written by Mr. Wallace, and that he was the General Passenger Agent of the defendant. (p. 17-ll. 26-27), but that does not prove his authority to bind the defendant.

II.

The Judge of the District Court erred in refusing to grant the defendant's motion to nonsuit.

(Specification 2, page 45).

(a).

The ticket in this case was good for passage between Hackensack, New Jersey, and New York City.

Among other conditions it contained the following two (italics ours):

> "I. This commutation ticket is not transferable, and will be valid when presented *by the person named hereon* for sixty rides during the calendar month and between the stations named, and must be presented to the Ferry Master (at the ferry entrance on New York side) and to the conductor each trip.
>
> "II. If offered *by any other person*, or if any erasures or alterations are made hereon, it will be forfeited and taken up by the Conductor or Ferry Master."

On this point the case is analagous to those decided in the United States Supreme Court, wherein it has been held that the consignor of freight or

expressage, or the purchaser of a railroad ticket, is not only conclusively presumed to know the conditions and terms of a bill of lading or ticket but is bound to ascertain them.

The knowledge of the plaintiff that the ticket was non-transferable is to be presumed from the terms of the ticket and from the fact that she testified (case, p. 18), that she knew that a commutation ticket issued to a person only entitled that person to use the ticket.

In *Boston & Maine Rd. v. Hooker*, 233 U. S., 98, 113, the United States Supreme Court said:

> "It follows therefore, from the previous decisions in this Court, that if it be found that the limitation of liability for baggage is required to be filed in the carrier's tariffs, the plaintiff was bound by such limitation."

The same Court in *Kansas Southern Ry. v. Carl*, 227 U. S., 639, held that:

> "Where the duly filed tariff sheets show different rates based on valuation, the shipper must take notice of the applicable rate and actual want of knowledge is no excuse; his knowledge is conclusively presumed."

The plaintiff is conclusively presumed to know that the commutation ticket is non-transferable.

The cases above cited differ from the one sub judice in that they deal with express shipments and the limitations of liability for a passenger's baggage, but the same rule as laid down by the United States Supreme Court therein, should and does apply to commutation tickets.

Inasmuch as the plaintiff was presumed to know

and was bound by the condition that the ticket would be "valid when presented by the person named" thereon, and "if offered by any other person" it would be forfeited and taken up by the conductor or Ferry Master, it was her duty to inspect the ticket to see if it was properly issued, before boarding the company's train.

When the name was written upon the commutation ticket, the plaintiff was as much bound thereby as she was bound by the conditions on the back thereof, because the name of the purchaser, when written, becomes a part of the contract stipulation of the ticket. Furthermore, the stipulation that "Mr. I. H. Gerety" was entitled to use the ticket in question, was a stipulation so plainly written on the face of the ticket that the plaintiff became bound thereby.

Conditions upon a passenger's ticket become binding upon him in the event of his knowing or discovering the provisions or his attention being drawn thereto, or the circumstances being such that it was negligence for him not to discover the conditions.

> *Aplington v. Pullman Co.*, App. Div., 97 N. Y. Supp., 329.

A passenger is bound by contract stipulations so plainly printed on the face of its ticket that it would be carelessness on his part not to read them, whether he did read them or not; but he is not bound if they did not so appear, unless by some means the provisions had been brought to his attention.

> *Louisville, N. A. & C. Ry. Co. v. Nicholai*, Ind. App., 30 N. E., 424.

The fact that commutation tickets are sold at re-

duced rates is itself sufficient to put the plaintiff upon inquiry, and to affect her with notice as to all the conditions and terms thereof.

> *Watson v. Louisville & N. R. Co.*, Tenn., 49 L. R.A., 454.

The case just cited held that:

> "A sale of round trip excursion tickets at reduced rates is itself sufficient to put a purchaser upon inquiry, and affect him with notice of unusual terms and conditions attached to the use of such ticket."

In this case it was held that the fact that the purchaser could neither read nor write, did not relieve him from complying with a condition printed on the return portion of the ticket, requiring it to be stamped by the agent of the company on the day of departure.

> *In French v. Merchants and Miners Transportation Company*, 199 Mass., 433; 85 N. E., 424, the Court held that:

> "As a general rule, a passenger who accepts a ticket on which the contract of transportation is stated is bound by its terms, whether he reads it or not.
>
> "Where a passenger's ticket contained on its face nearly two quarto pages of printed provisions, the holder of the ticket was bound to have it read to her if she could not read it herself, and the fact that her eyesight was defective and that she claimed that she could see only 'large objects' was insufficient to excuse her from acquainting herself with the contents of the ticket."

The plaintiff testified (case, p. 11) that she had bought a ticket for the month of July,and (case, p. 17) that she had commuted for six years or more. She is, therefore, bound by the non-transferable. condition printed on the ticket, whether she had actual knowledge thereof or not, for, having applied for and purchased a commutation ticket, and having used such tickets before, she is bound by its terms, whether she read them or not.

In *New York, L. E. & W. Ry. Co. v. Bennett*, 50 Federal, 496, the Circuit Court of Appeals for the Sixth Circuit, Swan, J., held that:

> "One who has applied for and purchased a second-class ticket, and has used such tickets before, is bound by its terms, whether he has read them or not."

The case of *Zimmermann v. The New York, Lake Erie & Western R. R. Co.*, 17 N. J. L. J., 7, in which Mr. Justice Dixon, in his charge, decided that it is a question for the jury whether a person applying for a ticket at a railroad station, is bound, in the exercise of ordinary care to read the ticket, is distinguishable from the one sub judice. In that case it did not appear that the plaintiff had ever bought such tickets before. Moreover, the ticket in that case was an excursion ticket.

The circumstances in this case are such that it was the duty of the plaintiff to examine her ticket.

In *Levan v. Atlantic Coast Line R. Co.* (S. C.), 68 S. E., 770, 43 L. R. A. (N. S.), 586n, it was said (italic ours):

> "The passenger is not in all cases rigidly charged with the obligation to see that the railroad company has properly expressed its undertaking for the guidance of the conductor and

the other officials who are to act for the carrier under the ticket. It is therefore a question of fact as to whether due diligence in the effort to get on the right train requires the passenger to examine his ticket. *Circumstances might arise where it would be his duty to do so.* Whether the circumstances require such an examination as due care on the part of the passenger is ordinarily a question for the jury. We think it safe for the Court to avoid laying down hard and fast rules as to what particular acts constitute negligence or due diligence."

It was clearly the duty of the plaintiff to see that her ticket was properly issued:

In *Elmore v. Sands*, 54 N. Y., 512, the New York Court of Appeals, held that:

"Whether a ticket is to be regarded as evidencing a contract, or as a token or voucher of the payment of fare only, the effect is the same. If the latter, it is the duty of the passenger, who desires not to pay upon the cars, to see that he has a proper voucher."

In *Shelton v. Erie R. R. Co.*, 73 N. J. L., 558, 567, in citing the opinion of Chancellor McGill, in *Parry v. Pennsylvania Railroad Co.*, 26 Vroom, 551, the Court of Errors and Appeals, Garrison, J., said:

"The ticket is a mere token that a fare had been paid and the passenger has the right to be carried to the destination it indicates, according to the reasonable regulations of the railway company."

(b.)

The plaintiff testified that she bought the ticket

on the first of August, 1914 (p. 9, line 21), and that it was taken from her on the 29th of that month (pages 12 and 13). It thus appears from her own evidence that she had the ticket for twenty-eight (28) days before it was taken up by the conductor. She was thus clearly guilty of negligence in using the ticket, knowing and being bound by the contract stipulation that it entitled "Mr. I. H. Gerety" only to transportation. This stipulation appeared so clearly upon the face of ticket, that, even if she did not see it, she is bound by it, because she was careless and negligent in not discovering the fact.

She is in the position of one who is presumed to have notice of a fact, having been, as she was, in the position to ascertain that fact, which reasonable diligence would have revealed to her; and not having ascertained that fact she is clearly guilty of negligence in having attempted to use the ticket, which on its face was not good for transportation.

Where a passenger knows or has reason to believe that the ticket handed him by the carrier's agent is not the ticket for which he called, he cannot thereafter complain that he received an improper ticket.

> *Pullman Co. v. Riley* (*Ala. App.*), 59 *So.*, 761.

III.

The Judge of the District Court erred in refusing to charge the jury that it was the duty of the plaintiff to examine her ticket, and in charging the jury that, in determining whether the plaintiff used reasonable care or not, they had a right to "consider the fact that the ticket was stamped

for twenty-seven or twenty-eight days after that" (the date of purchase) "on the regular train and passed."

(Specification 3, page 46).

(Specification 6, page 47).

(Specification 7, pages 47 and 48).

The Trial Court was requested to charge the jury that "it was the duty of the plaintiff to examine the ticket and upon discovering that it had been issued to 'Mr. I. H. Gerety' instead of 'Miss I. H Gerety,' she should have returned the same to the ticket agent, and had him correct the mistake, or request him to issue her a new one. Not having done so, she is not entitled to recover any damages."

This request the District Court refused to charge, but did charge the jury that "she is not chargeable with using extra care; she is only chargeable with using ordinary care. Because she had a right when handing in her old ticket with her money and getting back change with request to hand her out a commutation ticket, to presume that it was a good ticket for her to travel on. Of course that does not relieve her from ordinary care to see that it was a good ticket. And it is for you to say whether she used ordinary care."

This charge of the Judge was clearly an error in law, for in effect it was submitting to a trial jury whether from the evidence and from the reading of the contract on the face and back of a railroad ticket the jury find that the plaintiff *believed* she had a right to use the ticket. The question is, not what the plaintiff believed, but what were her legal rights and duties under the terms of the ticket.

The condition in the ticket issued to the plaintiff

was that it would be valid when presented by the person named thereon for sixty rides during the calendar month and between the stations named; and that if offered by any other person it will be forfeited and taken up.

The plaintiff accepted the ticket subject to conditions that were expressed in it. Spiess v. Erie Railroad Company, 71 N. J. L., 90.

In Spiess v. Erie Railroad Company, supra, the plaintiff was ejected by the Central Railroad Company when he claimed the right to ride on one of that company's cars on a thousand-mile ticket, whereupon he brought suit against the Erie Railroad, in which he recovered damages in the District Court.

> The Supreme Court through Van Syckel, J., said: "The plaintiff accepted the ticket subject to conditions expressed in it.
>
> "1. The Trial Court was requested to charge the jury that the plaintiff was bound by the conditions contained in the ticket.
>
> "This request the District Court Judge refused to charge, but did charge that the jury should determine 'whether plaintiff believed he had a right to use the ticket.'
>
> "This was error in law."
>
> Cited with approval by the Court of Errors and Appeals in Shelton v. Erie R. R. Co., 73 N. J. L., 558, at page 566.

The ticket on its very face negatived her right to presume that it was a good ticket for her to travel on. The question of the duty of, and the care required of, a purchaser of a commutation ticket to see that it is properly issued has been discussed and the authorities cited in the second point of this brief.

The fact that the defendants' conductors had stamped or honored the ticket for the twenty-seven or twenty-eight days prior to that upon which the same ticket was taken up by Conductor Barr, does not in any way, relieve the plaintiff of the burden cast upon her to see that her ticket was correctly issued. Granting that the conductors were negligent in not ascertaining that the ticket was issued to a man instead of a woman that fact is immaterial, for the plaintiff, by her own negligence, has deprived herself of any redress.

The Supreme Court said: "The fact that until within a day or two of the expiration of the ticket the mistake had not been noticed by the defendant's conductors whose duty it was to take such notice is somewhat eloquent evidence that it was a question of fact for the jury."

This statement of the Supreme Court lays down the rule that because the agents of the defendant were negligent in not discovering the mistake the plaintiff had a right to assume that she was entitled to use this ticket, but such a rule is clearly error, because the doctrine of comparative negligence has no place in our jurisprudence, in a case of this sort.

The mere fact that the defendant's agents were negligent in discovering the mistake does not relieve the plaintiff of the duty placed upon her by law, and does not change the nature of the legal rights and liabilities of the respective parties.

If plaintiff's negligence contributed to the injury, the comparative degree of negligence attributable to the parties, respectively, is immaterial. If the injury was occasioned in any degree by the plaintiff's own negligence, she is without redress, unless the act of the defendant amounted to a wilful trespass or intentional wrong.

New Jersey Express Co. v. Nichols, 32 N. J. L., 166; affirmed 33 N. J. L., 434.

Menger v. Laur, 55 N. J. L., 205.

If plaintiff's act of contributory negligence proximately contributes to her injury, the comparative degrees of plaintiff's and defendant's negligence will not be considered.

Pennsylvania R. Co. v. Righter, 42 N. J. L., 180.

Where a mileage ticket stipulated that it should be good only for a certain period. and that, if presented after the expiration of that time, the conductor should take up the ticket and collect fare, held, that its use a number of times in violation of the condition would not estop the company to take it up and eject the passenger from its train upon refusal to pay fare.

Sherman v. Chic. & N. W. R. Co, 40 *Iowa*, 45.

The mere fact that a person has been several times permitted to ride in a passenger train on a ticket only authorizing him to accompany stock shipments does not permit him to continue to ride on such passenger trains.

Thorp v. Concord R. Co. (*Vt.*) 17 *Atl.*, 791.

IV.

The Judge of the District Court erred in charging the jury that the plaintiff was entitled to recover beside what she had expended for fare after the commutation ticket had been taken up. "For her feelings of distress and men-

tal anguish that came from her being made a public spectacle. Without the conductor saying anything to her; by the mere taking of the ticket caused some commotion in the car, and beside that she is entitled to recover for a continuation of those feelings."
(Specification 8, p. 48).

The proximate cause of the commutation ticket having been taken up by the conductor was not the issuance thereof by the agent, but the plaintiff's own action in handing the same to the conductor; therefore, she has no right of action for the taking up of the ticket or any indignity or humiliation suffered as result thereof.

The plaintiff attempted to make a contract with the defendant for transportation between Anderson Street, Hackensack, N. J., and New York, for the month of August, 1914. That no such contract was ever made is evidenced by the ticket, which was issued to "Mr. I. H. Gerety." Her damages are therefore limited to the direct pecuniary loss due to the fact that there never was any contract. The indignity and humiliation, if any, suffered by the plaintiff upon the taking up of the ticket by the conductor was the direct result of the plaintiff's act, for which she has no right of action.

Shelton v. Erie R. R. Co., 73 N. J. L., 558.

Colton v. D. L. & W. R. R. Co., 80 N. J. L., 592.

In *Colton v. D. L. & W. R. R. Co.*, supra, the Supreme Court, Parker, J., said:

"If, therefore, the ticket in question only entitled Mr. J. L. Colton to ride, and Mrs. J. L. Colton attempting unsuccessfully to ride on it,

and refusing to pay fare, had been put off the train, she would have had no right of action for the ejection, even if she had bought and paid for the ticket, for she could not require the conductor to recognize and atone for the error of the ticket agent who sold her an invalid ticket."

The case is different from that of Harris v. Delaware, etc., R. R. Co., 77 N. J. L., 278; 82 N. J. L., 456. In that case the action was for *conversion* of a commutation ticket. It was held that compensatory damages for indignity accompanying such conversion might be recovered. In the present case the action is not for conversion, but it is limited to alleged negligence on the part of the defendant's agent in issuing an "improper ticket." Under the terms of the ticket the conductor had the right to take it up, and hence there was no conversion.

The Supreme Court said: "The rule charged as to the measure of damages for the indignity and mental distress incident to the occurrence from the mistake of the ticket agent was correct."

There was no proof that the defendant subjected the plaintiff to any indignity, nor, as suggested by the Trial Judge (p. 37, l. 2), that she was "made a public spectacle," for nowhere in the record is there any evidence that the conversation between the conductor and the plaintiff was heard by any other person, or that there was any commotion in the train.

This instruction was an assumption of a material controverted matter, which was neither established nor shown. It was error clearly prejudicial to the defendant, inasmuch as it was an invasion of the province of the jury.

In *Crosby v. Wells*, 73 N. J L., 790, the Court of Errors and Appeals, Green, J., at page 811, said:

"It is undoubtedly true that a Trial Judge may not assume as a fact that which is disputed, and, by his charge or otherwise, withdraw any such matter from the consideration of the jurors, thus affecting their determination."

See *Betts v. Francis* (1862), 1 Vroom, 153, 154, 156, 157.

Broadway Insurance Co. v. Doying (1893), 26 Id., 569, 572.

March v. Newark H. & V. Mach. Co. (1894), 28 Id., 36, 39.

In Broadway Insurance Co. v. Doying, supra, it was held that a request is properly refused, which requires the Trial Court to assume as a fact wh[illegible] was not proven.

The Supreme Court of the United States in *Second National Bank of Leavenworth v. Hunt*, 78 U. S., 391, 20 L. Ed., 190, said:

"Courts cannot assume, in their instructions to juries, that material facts upon which the parties rely are established, unless they are admitted, or the evidence respecting them is not controverted. The courts would otherwise encroach upon the appropriate and exclusive province of juries."

The Court of Appeals of Maryland in *Bonaparte v. Thayer*, 52 Atl., 496, held that:

"An instruction assuming doubtful facts as having been proven is erroneous."

In *McHenry v. Bulifant*, 56 Atl., 226, the Supreme Court of Pennsylvania held that:

"Instructions based on assumptions of fact which are in dispute are properly refused."

Heindel v. Hetzel, 82 N. J. L., 155; 82 Atl., 511.

Daniels v. State (Del.), 48 Atl., 196.

King Solomon Tunnel, etc. Co. v. Mary Verna Mining Co., (Colo. App.), 127 Pac., 129.

Gulf Compress Co. v. Ins. Co. of Penn. (Tenn.), 167 S. W., 859.

Clough v. Whitcomb, 105 Mass., 482.

Chase v. Holton, 143 Mass., 118.

Huntington v. Saunders, 166 Mass., 92.

Lufkin v. Lufkin, *182 Mass.*, 476, dismissed for lack of jurisdiction in 192 U. S., 601.

Leroy v. Park Fire Ins. Co., 39 N. Y., 56.

Lawson v. Metropolitan St. R. Co., 57 N. Y., Supp., 997, affirmed 166 N. Y., 589.

Mo., K. & T. Ry. Co. of Texas v. Williams (*Tex. Civ. App.*), 40 S. W., 161.

Tonsor v. Fidelity & Deposit Co. of Maryland, 158 Ill. App., 515.

V.

The judgment of the District Court should be reversed and a venire de novo issued.

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Defendant-Appellant.

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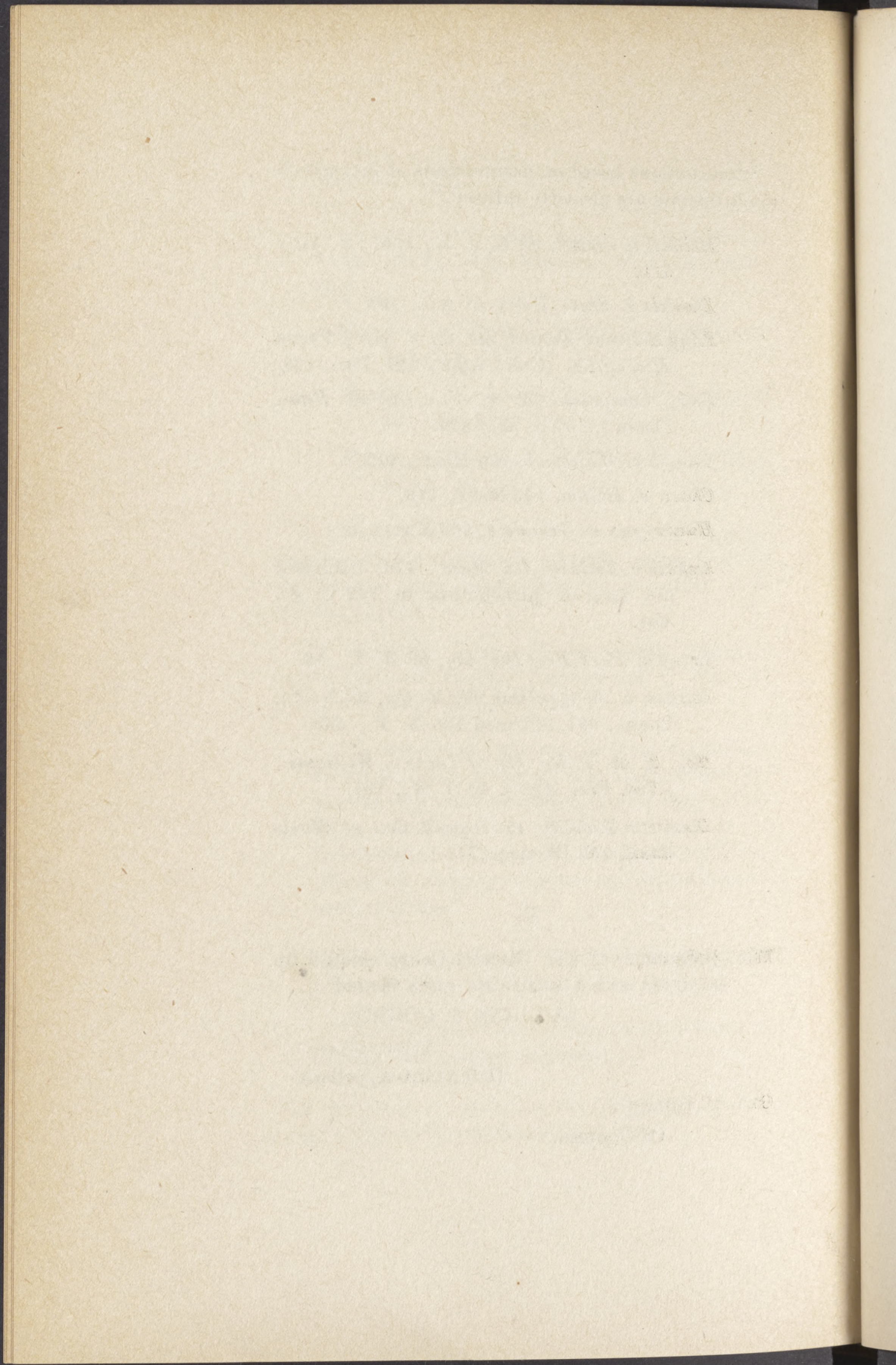


New Jersey Court of Errors and Appeals.

IDA H. GERETY, *Plaintiff-Respondent,* *vs.* NEW JERSEY AND NEW YORK RAILROAD, A CORPORATION, *Defendant-Appellant.*	*In Tort.* *On Appeal from the Supreme Court.*

Brief in Behalf of Plaintiff-Respondent

This is an appeal taken, by the above named defendant appellant in the above entitled cause, from a judgment of the Supreme Court affirming a judgment entered on a verdict by a jury in the Third Judicial District Court of the County of Bergen in favor of the plaintiff-respondent. The action was instituted for damages sustained by reason of the negligence of the ticket agent of the defendant-appellant in not delivering to the plaintiff-respondent the commutation ticket for which she asked and paid. The action was brought pursuant to the "illustrative dictum" in *Shelton vs. Erie R. R. Co., 44 Vroom, p. 558* and the decisions in *Wiley vs. West Jersey R. R. Co., 44 N. J. L., p. 248; Zimmerman vs. N. Y. Lake Erie, etc., R. R. Co., 17 N. J. Law Journal, p. 7,* and was not brought because of the act of the conductor in "lifting" plaintiff-respondent's ticket, which he had a right to do under the decisions in *Colton vs. D. L. & W. R. R. Co., 80 N. J. L., p. 592; Harris vs. D. L. & W. R. R. Co., 77 N. J. L., p. 282.* This brief will deal with the defendant-appellant's Points as set forth in its Specifications of Points.

AS TO POINT 1

The Court very properly admitted in evidence the two letters from R. W. Wallace, General Passenger Agent, marked P.3 and P.4. The ground of objection to the introduction of said letters was that they were unaccepted offers of compromise *(P. 16, LINE 30)*. The objection was not well grounded and, therefore, was rightly overruled.

The letters in question did not contain an offer of compromise such as would bring them within the purview of the decisions in *Miller vs. Halsey, 14 N. J. L., p. 48; Wrege vs. Westcott, 30 N. J. L., p. 212, or the Lehigh Valley Terminal R. R. Co. vs. Currie, 54 N. J. Eq., p. 84.*

An offer of compromise suggests a willingness to enter into an agreement to avoid or settle a lawsuit, the yielding of opposing claims, the surrender of some right or claimed right, in consideration of a like surrender of some counterclaim. The letters in question cannot be construed to be such an offer. At the time the appellant's agent wrote those letters no suit had been started, or contemplated, nor had any claim for damages been made by plaintiff-respondent. The writing of the letters was occasioned only by a visit of the plaintiff-respondent to Mr. Wallace's office, immediately upon the arrival of the train in Jersey City, after her ticket had been "lifted" and only for the purpose of claiming said commutation ticket *(P. 14, LINE 20)*. Respondent simply desired possession of her ticket that she might continue to use the same for the balance of the month of August, 1914, for which she had paid and for which it was issued. The record contains nothing to indicate that she was seeking out Mr. Wallace to claim compensation for injuries to her feelings.

Even though the Court should be inclined to regard the letters in the light of unaccepted offers of compromise, which I seriously doubt, they should have been admitted in evidence, I believe, because the offer, if such it is, was not made without prejudice to the party making it, and also because they were to prove a material fact to the issue, the

existence of which the letters of the defendant-appellant conceded. The letters were not introduced to prove an offer of compromise but for the sole purpose of showing the fact that title to the lifted ticket was vested in the respondent. This was a material fact to the issue, and such ownership was clearly established by an investigation made by the appellant and so conceded in the letters. *(P. 46, LINES 16 AND 23; P. 42, LINE 1).* The letters clearly corroborated the respondent in her testimony that it was her ticket and not the ticket of an imaginary male person by the name of ''Mr. I. H. Gerety.'' This point was important and the jury had a legal right to know the result of the defendant-appellant's ''complete investigation.''

Mr. Justice Garrison in his opinion in deciding this case in the Court below said on this point: There was no error in admitting in evidence the letters of the defendant's General Passenger Agent, who had taken up with the plaintiff the mistake made by the local agent. These letters were within the scope of the authority of their writer, and were in no sense offers of compromise or settlement of a pending or threatened litigation. It is a stronger case than that of *Agricultural Insurance Co. vs. Potts, 55 N. J. L., 158.*

AS TO POINT 2

The Court rightfully denied the motion to non-suit the plaintiff as ground (a) was not well taken. It was not for the Court to say that it was the respondent's duty to examine her ticket to see if it was properly issued to her and upon learning that it was not so issued, it was her duty to return to the agent and have the ticket corrected, or a new ticket issued in lieu thereof. It was a question of fact for the jury to decide, which it did in this cause. It was a question of the exercise of ordinary care. It was within the province of the jury, and not of the Court, to determine whether or not this plaintiff did what the ordinary person would have done under like circumstances. This

rule the late Mr. Justice Dixon made clear in *Zimmerman vs. N. Y. Lake Erie, etc., R. R. Co., 17 N. J. Law Journal, p. 7.*

The defendant, by its own acts, destroyed all its right to charge the plaintiff with legal knowledge of the error as contended in ground (b). The ticket was bought by the plaintiff on August 1, 1914 *(P. 12, LINE 23.)* It was taken from her by the defendant's agent on August, 29, 1914 *(P. 12, LINE 21; P. 13, LINE 30).* For 28 days the plaintiff used and the defendant accepted the said ticket as plaintiff's fare. Almost on every one of these 28 days the plaintiff commuted on defendant's trains. In the morning she went to New York and in the evening she returned to Hackensack. She rode approximately 56 times on said ticket, without challenge ever having been made to it by any of the defendant's agents. Plaintiff in her testimony said she thought that during that month she had travelled with that particular conductor (Bahr), before the day when he "lifted" her ticket. *(P. 15, LINE 9).*

The defendant's agents undoubtedly had the right to take up the ticket at any time they saw fit, even though they had previously recognized it as the plaintiff's right to ride, yet their very acts in so recognizing the ticket for 28 days and approximately 56 times, would be enough to lead the ordinary lay person to believe the ticket to be valid, and that even though it was issued to a "Mr." it could still be used by a "Miss" or a "Mrs.," if such person proved to be the real purchaser. These acts estopped the defendant from charging the plaintiff with knowledge of the ticket's defect. *(Zimmermann vs. N. Y. Lake Erie, etc., R. R. Co., 17 N. J. Law Journal, p. 7).*

It is true that the plaintiff on *(P. 18, LINE 7),* admitted she knew that the only person entitled to ride on a commutation ticket is the one to whom it is "issued." This answer was evidently a mistake to which her attorney desired to call her attention upon redirect ex-

amination *(P. 19, LINE 18)*. It appeared to the plaintiff's attorney that the witness misunderstood the legal meaning of the word "issued," and was, mayhap, under the impression, that in law the word meant the person to whom it was "given" by the agent in return for the purchase price. This is the common acceptation of the meaning of the word "issued" and not as laid down in the law, to wit, "the person whose name is written on the face thereof." The plaintiff could not have known this fact, which she admitted, unless she had read the case of *Colton vs. D. L. & W. R. R. Co., 80 N. J. L., p. 592,* which is unreasonable to suppose, she being a draper in a dressmaking establishment. Her attorney frankly admits that he had not done so, or he would not have brought the action for the first time under the theory in the case of *Harris vs. D. L. & W. R. R. Co., 77 N. J. L., p. 282,* instead of bringing the action, as he did the second time, under the theory in *Zimmermann vs. N. Y. Lake Erie, etc., R. R. Co., 17 N. J. Law Journal, p. 7,* and suggested in *Shelton vs. Erie R. R. Co., 44 Vroom, p. 564.*

AS TO POINT 3

The Court did not err in refusing to charge the request, submitted in behalf of defendant, referred to in this Point.

There was no legal duty resting on this plaintiff-respondent to examine her ticket. She was only supposed to do what an ordinary person would do under like circumstances. Whether or not the plaintiff did this was a question of fact for the jury to decide and not for the Court to charge. *(Zimmermann vs. N. Y. Lake Erie, etc., R. R. Co., 17 N. J. Law Journal, p. 7).*

AS TO POINT 4

The Court did not err in refusing to charge the request submitted in behalf of the defendant, referred to in this Point. Such refusal was neither error nor prejudical to the rights of the defendant-appellant.

In *Harris vs. D. L. & W. R. R. Co., 77 N. J. L., p. 280,*

which is a case similar to the one under discussion and almost on "all fours," Mr. Justice Swayze, in rendering the opinion of the Court *(LINE 1)* settled the law on this point in the following words: "He (meaning the trial judge) allowed the plaintiff over defendant's objection to prove the conversation and manner of the conductor at the time and charged the jury that the plaintiff was entitled to recover such damages as might compensate him for the value of the ticket at the time it was taken up, and also such damages as they thought just and proper under the circumstances, for injuries to his feelings and the ignominy thrust upon him, if they found there was any. * * * There was an altercation between the conductor and the passenger in the presence of the other passengers and it was competent for the plaintiff to prove the circumstances, as he was allowed to do, and it was for the jury to decide whether they amounted to an indignity. Cases upon the subject do not seem to be very numerous but the principle is recognized in *Sedg. Dam., Sec. 44.* * * * We think that where the indignity is the natural and proximate result of the conduct of the defendant, damage should be recovered, and in a case where a railroad company takes up a passenger's ticket illegally and in a public manner under such circumstances virtually amounting to an imputation of fraud a proper case is presented. In this respect we find no error." *(P. 81.)*

In this same case in the Court of Errors and Appeals in *82 N. J. L., p. 458,* Mr. Justice Parker in speaking for the Court says: "This point once settled, the question of damages is simplified, for the authorities are as one that in an action of trespass, which is based on the taking being violent in contemplation of law, compensatory damages are recoverable for humiliation and indignity accompanying a wrongful act. * * * Two questions of evidence are also presented and were disposed of in the per curiam opinion of the Supreme Court above set forth. As to these questions we concur in the view of the Supreme

Court and deem it unnecessary to add anything to the opinion above quoted.''

''The judgment will be affirmed.''

See, also, *Allen vs. Camden & Philadelphia Ferry Co., 46 N. J. L., p. 199.*

AS TO POINT 5

The law and argument submitted herein as to Point 1 is also offered as to this Point, by reference thereto.

The Court did not err in refusing to charge the request referred to in this Point. The letters spoke for themselves and in no part thereof was the right reserved to make the offer of compromise, if it could be so considered, ''without prejudice,'' to the party making it.

For the lower Court to say that ''Miss Gerety's visit to the General Passenger Agent of the defendant to see about the redemption of her ticket, is such conduct on her part as to lead the defendant to believe that a compromise may probably be effected,'' would be contrary to the evidence, for on *(P. 14, LINE 20)*, in response to a question by the Court, Miss Gerety testified that she went to Mr. Wallace's office to ''claim'' her commutation ticket. She did not say she went there to ''see about the redemption'' of her ticket. I am of the opinion that there is a decided legal difference between claiming a ticket and redeeming one. Even were the words synonymous, I contend that such action on the part of the plaintiff-respondent was not such conduct as would lead the defendant-appellant ''to believe that a compromise may probably be effected'' and it would be erroneous for the trial court to so charge the jury. If considered at all it would have been a question of fact for the jury to decide.

AS TO POINT 6

The Court did not err in charging the jury, over the exception of the defendant's counsel, as contended by the defendant-appellant in this point.

The question as to whether or not the plaintiff used rea-

sonable care, was to be determined wholly by the jury and not by the Court. In order for the jury to arrive at a determination whether or not the plaintiff used such care as an ordinary person would under like circumstances, they had a right to consider all the circumstances of the case at bar, and it was surely not reversible error for the Court, in his charge, to call to their attention any particular point in the evidence which would aid them in arriving at a just decision on this question. *(Zimmerman vs. N. Y. Lake Erie, etc., R. R. Co., 17 N. J. Law Journal, p. 7).*

The learned Justice in deciding the case at bar in the Court below, said in his opinion on this Point, "whether or not the plaintiff noticed, or ought by reasonable care to have noticed, the mistake could not be determined by the Court. * * * it was a question of fact for the jury to which it was left under a charge quite as favorable to the defendant as the case permitted."

AS TO POINT 7

The Court did not err in charging the jury, over the objections of defendant's counsel, in words specified in this Point.

The plaintiff could not have been charged with the use of extra care in the purchase of the ticket in question but was only chargeable with using ordinary care. *(Zimmerman vs. N. Y. Lake Erie, etc., R. R. Co., 17 N. J. Law Journal, p. 7).*

"It is an obligation of a railroad company with respect to the acts of its agents to deliver to passengers the tickets for which they ask and pay; if this is not done, whether that be the fault of the agent or the company, this obligation is broken and the company is liable for damages as a result therefrom." * * * "What has been mistaken for this authority to make contracts is the ability of these agents to make trouble for their companies by their negligence in the delivery of tickets, or their mistakes in giving information. For injuries resulting from these acts of

the ticket agent their principals may, as we have already seen, be held liable in an appropriate action." *(Shelton vs. Erie R. R. Co., 44 Vroom, p. 564**568).*

"If the ticket agent issued to the plaintiff a wrongful ticket and the conductor took this ticket from the plaintiff and caused her to suffer damage thereby, with no other culpable and inefficient agency intervening between the defendant's dereliction and the injury, the plaintiff's injuries can be considered the result of the ticket agent's wrongful act." *(Wiley vs. West Jersey R. R. Co., 44 N. J. L., p. 248.)*

AS TO POINT 8

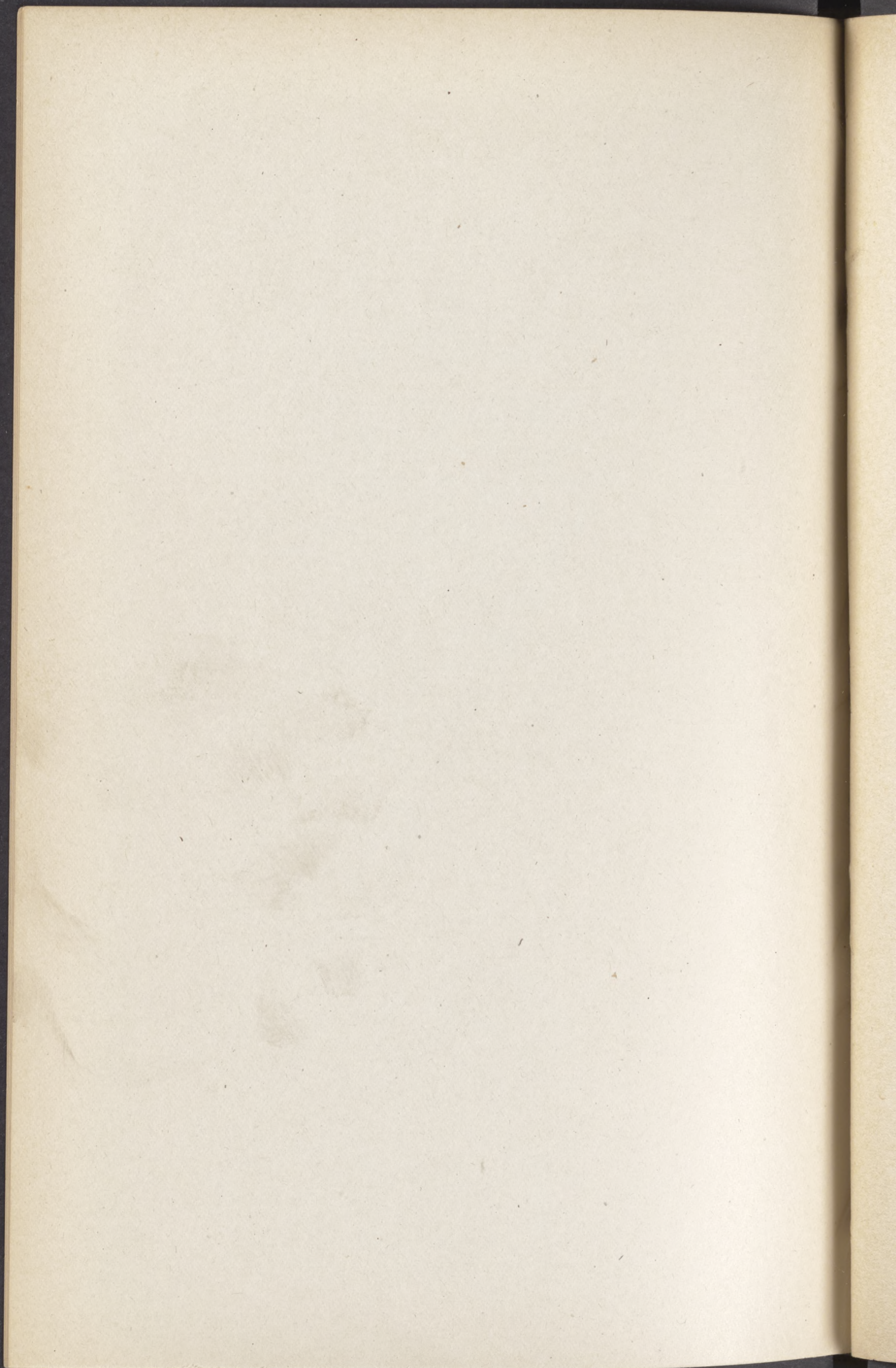
The Court charged in accordance with the law on the question of recovery of damages as laid down by the Chancellor in *Allen vs. Camden & Philadelphia Ferry Co., 46 N. J. L., p. 199,* and again by Mr. Justice Swayze in *Harris vs. D. L. & W. R. R. Co., 77 N. J. L., p. 280,* and by Mr. Justice Parker in the same case in *82 N. J. L., p. 458.*

AS TO POINT 9

It is submitted, therefore, that the judgment of the Supreme Court in affirming the judgment of the said District Court, should be sustained for the reasons advanced aforesaid.

Respectfully submitted,

PATRICK HENRY MALEY,
Attorney for Plaintiff-Respondent.



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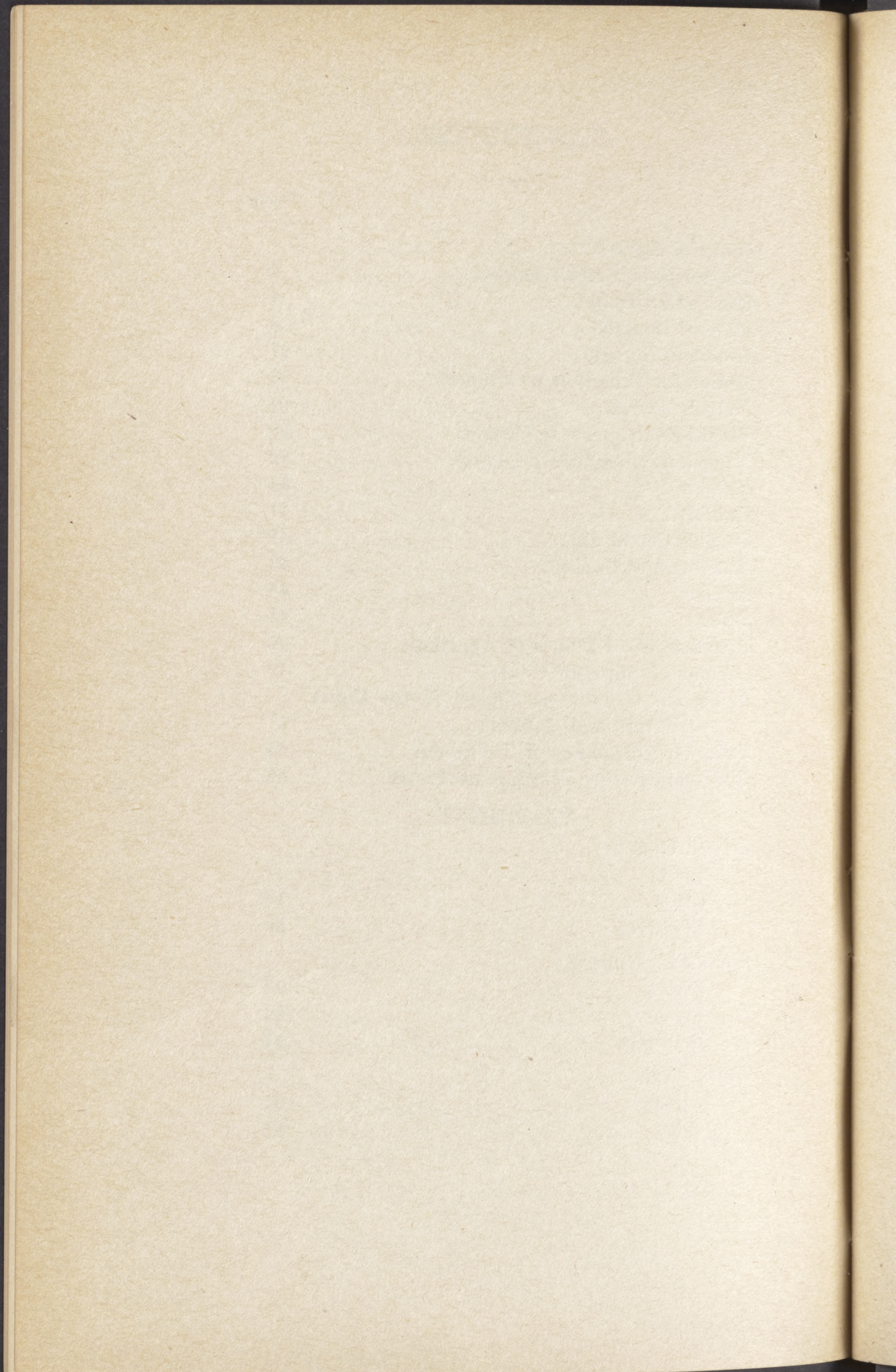

District Court of the Third Judicial District of the County of Bergen.

NOTICE OF APPEAL.

Filed April 16th, 1915.

10

IDA H. GERETY,
Plaintiff,

vs.

THE NEW JERSEY AND NEW YORK RAILROAD COMPANY, A CORPORATION,
Defendant.

20

To Ida H. Gerety or Patrick Henry Maley, her attorney:

SIR:

Take notice, that the defendant, the New Jersey and New York Railroad Company, a corporation, hereby appeals to the New Jersey Supreme Court, from the judgment of the District Court of the Third Judicial District of the County of Bergen, rendered in the above stated action, on the 9th day of April, 1915.

30

Dated April 16, 1915.

COLLINS & CORBIN,
Attorneys of Defendant.

40

TRANSCRIPT OF CLERK'S DOCKET.

THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE COUNTY OF BERGEN.

STATE OF NEW JERSEY, }
BERGEN COUNTY, } SS.

10

IDA H. GERETY,
Plaintiff,

vs.

NEW JERSEY AND NEW YORK RAILROAD,
Defendant.

In Tort.
Demand $500.

20 Before

PETER W. STAGG, Esq., Judge.

PATRICK HENRY MALEY, Plaintiff's Attorney.

COLLINS & CORBIN, Defendant's Attorneys.

A summons was issued tested February 6th, A. D. 1915, returnable February 19, 1915, at 9.30 o'clock in the forenoon at the Court room of said Court in Bergen County. The Constable returned the summons as follows, viz.: I served the within 30 summons February 11th, A. D. 1915, on New Jersey and New York Railroad, on Paul Beshman, their agent, at the Essex Street Station, Hackensack, New Jersey, the defendant, by reading the same to him and delivering to him a true copy thereof.

GARRETT A. DAWSON,
Constable.

40

TRANSCRIPT OF CLERK'S DOCKET

Plaintiff's demand was filed February 17th, A. D. 1915.

March 19th, A. D. 1915, the plaintiff appeared and the defendant appearing and the trial of the cause was proceeded with as follows: On the testimony of the following witnesses judgment was rendered: 10

On the part of the plaintiff: Ida H. Gerety.

On the part of the defendant: Frank E. Greenup and John Baar.

Exhibits:

August commutation ticket, marked P. 1.

July Commutation ticket, marked P 2.

20

Letter marked P 3.

Letter marked P 4.

Jurors (1) Garrett D. King (2) Enoch Vreeland (3) Vincent Powers (4) Clarence Washburn (5) Frederick C. Dunn (6) William Bratt (7) Samuel R. Cumming (8) James Voorhees (9) Henry Kipp (10) George Turck (11) Patrick C. Byrne (12) Speir B. Cumming.

30

Whereupon it is, on the nineteenth day of March, A. D. 1915, by the jury considered and adjudged that said Ida H. Gerety have judgment against the said defendant as follows:

That the said plaintiff recover against the said defendant the sum of three hundred and two dollars and ninety cents damages and twenty-four dollars and fifty cents cost of suit.

April 9th, A. D. 1915, motion for a new trial argued and motion denied. 40

	County	*et al.*
Summons, Copy..............	$1.50	....
Service and Return..........	....	.60
Venire................	1.25	....
Summoning Jury	....	1.00
Attending "	....	.50
Jury Fees..................	....	3.00
Listing Fee	1.50	....
5% Attorney Fee.............	....	15.15
		$20.25
Carried forward.........		4.25
Total		$24.50

I, JUDSON B. SALISBURY, Clerk of the District Court of the Third Judicial District of the County of Bergen, do hereby certify that the foregoing is a true transcript of the record in the matter entitled Ida H. Gerety, plaintiff, vs. New Jersey and New York Railroad, defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the aforesaid Court this sixteenth day of April, A. D. 1915.

JUDSON B. SALISBURY,
Clerk.

(Court Seal and Documentary Stamp).

DISTRICT COURT SUMMONS.

STATE OF NEW JERSEY, }
BERGEN COUNTY. } SS.

[L. S.] The State of New Jersey to the Sergeant-at-Arms of said Court, or any Constable of said County:

STATE OF DEMAND

Summon New Jersey and New York Railroad to appear before the District Court of the Third Judicial District of the County of Bergen, to be held at the Court House, Hackensack, in said County, on the nineteenth day of February, one thousand nine hundred and fifteen, at nine-thirty o'clock in the forenoon, to answer unto Ida H. Gerety, in an action in tort, to the damage of the plaintiff five hundred dollars. 10

WITNESS, Peter W. Stagg, Esq., Judge of the District Court of the Third Judicial District of the County of Bergen, at Hackensack aforesaid, the sixth day of February, in the year one thousand nine hundred and fifteen.

JUDSON B. SALISBURY, 20
Clerk.

PATRICK HENRY MALEY,
Plaintiff's Attorney.

A true copy.

STATE OF DEMAND. 30

Filed February 17th, 1915.

The plaintiff demands of the defendant the sum of five hundred ($500.00) dollars, for that on or about the 1st day of August, 1914, the plaintiff asked of the ticket agent, an agent of said defendant, at a railroad station located at Anderson street, in the village of Hackensack, County of Bergen, and State of New Jersey, and paid said agent for a commutation ticket, entitling said plaintiff to sixty (60) rides on the trains owned and operated by 40

said defendant, between the village of Hackensack, Anderson street, and the City of New York, County and State of New York, during the said month of August; that said ticket agent did not issue to said plaintiff the ticket asked and paid for by said plaintiff, but did carelessly and negligently issue to said
10 plaintiff an improper ticket; that on the 29th day of August, 1914, while plaintiff was riding on one of said defendant's trains, between the said village of Hackensack and the city of Jersey City, County of Hudson and State of New Jersey, one John Bahr, conductor and agent of said defendant, refused to accept as fare from said plaintiff the said improper ticket, issued by the said ticket agent to the said plaintiff, and said Bahr took up said ticket, compelled plaintiff to pay a cash fare, and addressed
20 remarks to said plaintiff, imputing to her an intent to defraud said defendant, in such a manner and in such a tone of voice, as to cause said plaintiff to suffer great mental anguish, indignity, humiliation, insult and ignominy; that due to the negligence of said ticket agent, plaintiff was compelled to expend a further sum of two and 10/100 ($2.10) dollars for passage, in addition to the moneys already paid for a proper ticket. All to the plaintiff's damage of five hundred ($500) dollars.
30

Judgment will be claimed by the plaintiff against the defendant for the sum of five hundred ($500) dollars with the lawful costs of this suit.

PATRICK HENRY MALEY,
Attorney for Plaintiff.

40

IDA H. GERETY

TESTIMONY.

The above entitled cause was tried in the District Court of the Third Judicial District of the County of Bergen, on Friday, March 19th, A. D. 1915, in the Court House in the village of Hackensack, Bergen County, New Jersey, before the Hon. Peter W. Stagg, Esq , Judge, and a jury; and in the presence of Patrick H. Maley, of counsel for plaintiff, and Mr. Stevens, of Collins & Corbin, counsel for defendant. 10

Ida H. Gerety, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Motion made by counsel for defendant: That the cause of action be dismissed on the ground of duplicity and uncertainty in the state of demand. It does not appear from the state of demand whether the plaintiff is suing for the wrongful issuance of the ticket, as alleged, or whether she is suing for the problematical and consequential damages when the conductor took up the ticket on the train. 20

By the Court—I am willing to allow an amendment in the state of demand to show on which ground the plaintiff brings her cause of action, whether it is for the wrongful issuance of the ticket, or the taking up of the ticket on the train by the conductor. But I will not grant the motion to dismiss. What have you to say to that, Mr. Maley, why should you not strike out that part of your declaration which charges remarks made by the conductor, when he lifted her ticket? The question was then argued 30 40

by Mr. Maley. The Court asked Mr. Stevens to state exactly what part of the state of demand he wished stricken out.

Mr. Stevens—I move that all that part of the declaration and state of demand which alleges as follows: "And addressed remarks to said plaintiff imputing to her an intention to defraud said defendant, in such a manner, and in such a tone of voice to cause said plaintiff to suffer great mental anguish, agony, indignity, humility, insult and ignominy "* * * and to have stricken out the last sentence, which reads as follows: * * * "all to the plaintiff's damage five hundred dollars."

By the Court—The general motion to strike it all out is denied. Exception asked and granted.

Direct examination by Mr. Maley.

Q. What is your name, please? A. Ida Hubbard Gerety.

Q. Where do you live? A. No. 33 Linden street, Hackensack, New Jersey.

Q. I presume you are over age? A. Yes, sir.

Q. What is your business? A. I am a draper and cutter in a dressmaking establishment.

Q. Where? A. Leslie's, Fifty-seventh street, New York.

Q. How long have you been employed there? A. For the past five years, off and on, and manager for a year and a half or two years.

Q. In going from your home to the place of your employment every day what railroad do you travel? A. New Jersey and New York.

Q. What station do you use in Hackensack? A. Anderson street.

Q. In what manner in traveling upon that railroad do you pay your fare? A. I buy a monthly commutation ticket.

Q. How long have you been in the habit of using commutation tickets on the New Jersey and New York Railroad? A. Six years. 10

Q. Did you buy any commutation ticket for the month of August of last year? A. I did.

Q I show you a piece of paste board, purporting to be a monthly commutation ticket of the New Jersey and New York Railroad Company, and ask you if you ever saw that paper before? A. I did.

Q. When did you see this last? A. The last was on the 29th of August, 1914.

Q. When did you first see it? A. The first of August, 1914. 20

Q. Did you have possession of this ticket the first of August? A. I bought it on the first of August at the Anderson Street Station by presenting my old commutation ticket and a ten dollar bill and received that ticket and the change and my old commutation ticket with the name Miss I. H. Gerety.

Q. What month do you refer to as the old commutation ticket? A. July, 1914.

Q. Just describe now to the jury and Court the circumstances under which you bought this ticket? A. I stepped into the station and placed my money at the window with my old commutation ticket and said "Commutation, please," and I received my ticket and change and put them in my pocketbook, and then boarded the train and rode on it for twenty-nine days. 30

Ticket for the month of August, 1914, offered

40

in evidence. Received and marked Exhibit P 1. Reads as follows:

New Jersey & New York
M Railroad
Mr. I. H. Gerety W. R. S
10 August, 1914
Hackensack, Anderson Street
and
136 New York

In accordance with the conditions of the contract on the back of ticket.

On the back of the ticket the following conditions appear:

"I. This commutation ticket is not transferable, and will be valid when presented by the
20 person named thereon for sixty rides during the calendar month and between the stations named; and must be presented to the Ferry Master (at the ferry entrance on the New York side) and to the Conductor each trip.

"II. If offered by any other person, or if any erasures or alterations are made hereon, it will be forfeited and taken up by the Conductor or Ferry Master.

30 "III. This ticket is good for continuous passage only, and on such trains as are scheduled to stop regularly at the stations named hereon, but the holder hereof may ride any number of times, not exceeding sixty on any day or days within the calendar month.

"IV. It is good only between the stations named on face and is not good from, to or between intermediate stations except where specifically provided for in the tariff under the head
40 of 'Optional Arrangements.'

"V. No return of any portion of the fare received for this ticket will be made in consequence of the inability of the holder to use the same within the calendar month for which it has been issued, except where the contract has been canceled by the Company owing to discontinuance of train service or some unforeseen cause. 10

"VI. No return of any portion of the fare received for this ticket will be made in case the holder loses the same.

"VII. No return of any portion of the fare received for this ticket will be made in lieu of other passage money paid to agents or conductors for failure to produce this ticket to cover the ride in question." 20

By the Court.

Q. Who was the person who handed you the ticket and the change through the window? A. The agent there, and I have since learned his name is Greenup.

Q. Was he station agent there? A. The station agent at the Anderson Street Station for the New Jersey and New York Railroad Company.

By Counsel.

Q. Where was this man? A. In the office, behind the window, in a large encaged place. 30

Q. Was there any other people buying tickets? A. Yes, a large number, and I lost my train. There was another man there.

By the Court.

Q. Another man there? A. Yes.

By Counsel.

Q. I show you another piece of cardboard, which purports to be a commutation ticket of the New Jersey and New York Railroad Company for the 40

month of July and ask you if you have ever seen that before? A. Yes.

Q. You say you saw this? A. Yes, sir.

Q. Was the ticket that you gave to the man inside the window that you refer to as having given with the ten dollar bill to the man behind the window?

10

Objected to on the ground that it is incompetent and immaterial and irrelevant. Objection overruled, exception.

A. That is the ticket.

Commutation ticket for the month of July, 1914, offered in evidence. Objected to on the same grounds, and further, it was a ticket for the month preceding, and issued on the first of July, and it is too remote from the date of the ticket which was taken up.

20

By the Court—I will admit it on the ground that it is the same ticket that the witness handed in when she asked for a commutation ticket.

Objection overruled. Exception.

30

Marked Exhibit P 2. Reading as follows:

New Jersey & New York
Railroad
Miss I. H. Gerety
July, 1914
Hackensack, Anderson Street 7F
and
New York
In accordance with the conditions of the
contract on back of ticket

40

391 R. H. Wallace.

Q. When you got the ticket, Miss Gerety, what did you do? A. I put it in my pocketbook and travelled on it. I always put it in my purse.

By the Court.

Q. What did you do when you boarded the train and the conductor came around? A. I gave it to him and he detached the stub that is attached to the bottom and he cancelled a ride. 10

Q. That same evening? A. I presented it to the conductor and he cancelled a ride.

Q. Did that continue on each day you rode, until the 29th? A. Yes, sir.

Q. Did any one of these conductors raise the question about this ticket being illegal? A. Not one. 20

By Counsel.

Q. Do you recall the 29th day of August of last year? A. Very distinctly.

Q. Did you go to business at your regular hour that morning? A. No, sir; I went down on the 10.18 train from the Anderson Street Station and I presented my ticket a few seconds after getting on the train and the conductor looked at it and said that this ticket did not belong to me, "Where did you get it from— 30

Objection to any testimony except as to just what transpired at the time he took the ticket.

Witness resumed—He said, "where did you get it from," and I said "I bought and paid for it," and he said "It does not belong to you, it is not made out properly." I said "I have the other commutation ticket here," and he looked at it and said, "The 'I. H.' is the same," and he said further, "we are 40

not supposed to honor anything we are doubtful about." And he cancelled my ticket and handed it back to me.

By the Court.

10 Q. What do you mean by cancelling it? A. He punched a ride with the thing he carries and he said, "We are not supposed to honor anything we are doubtful about," and I said, "I would not want you to do anything dishonorable for me." He said "It is not made out properly." I said, "If you take the ticket you will be sorry—

Object to any statement as to that.

Witness continues—He had returned the ticket
20 to me and I held it out in my hand and said, "If you take the ticket you will be sorry," and he raised his voice and said, "Give me that ticket and give me fifty cents" and snatched the ticket. I said, "Suppose I have not got fifty cents—

Objected to on the ground that any statement made after the ticket was lifted is immaterial.

30 *By the Court.*

Q. You had lost the ticket at that time? A. Yes, he had taken it out of hand and demanded fifty cents.

Object to anything further, anything outside of that.

BY THE COURT—She has got to tell how she paid the money. She has a right to say just what happened when she gave the
40 money.

WITNESS—So I said, "supposing I have not the money," and he said that would concern me. And I opened my purse and handed him a two dollar bill and he took my fare and gave me a receipt, and he went away and came later. 10

Object to anything happened later.

BY THE COURT—I will sustain that objection. Exception to the ruling of the Court.

Q. What did you do?

By the Court.

Q. What did you do after that? A. I asked the conductor how I could identify him and he said the slip I had was good enough, the number on that. So when the train arrived in Jersey City, I ran down and asked the gateman where I could go to claim my commutation ticket and he said there is a little office at turnstile and the clerks in there said I would have to go to Mr. Wallace's office in 50 Church street and I went over there and I said— 20

Objected to. Objection sustained.

Q. How long were you there? A. About fifteen minutes. 30

Q. As a result of that conversation that you had in that office of Mr. Wallace's, the General Passenger Agent, what did you do? A. I went up there and came back down; I was supposed to go up town, but I went to Jersey City to take the train home, before I realized it; I was so nervous.

Q. Did you ever get your ticket back? A. I did not. I got letters that told me if I would call—

Objected to. Objection sustained. 40

By the Court.

Q. This train that you went on that morning was a different train from the one that you usually travel on? A. A later train.

Q. Was that a different conductor than you had been travelling with, during the month of August? A. I think during that month I had travelled with him before.

10

Q. Had this man punched your ticket before? A. I don't always travel on the same train.

Q. Had this conductor, during the month of August, punched your ticket, that you recollect? A. I am not positive.

By Counsel.

20

Q. How long had you been commuting? A. Six years.

Q. Did you know this conductor? A. Yes, I have travelled on his train many times.

Q. During that six years about how many times have you travelled on the train with that man? A. I could not count them.

Q. Estimate them? A. I travelled every day except Sunday during the year.

Q. A hundred times? A. I should think so many.

30

Q. I show you a letter purporting to be signed by R. W. Wallace, General Passenger Agent, under date of September 14th, 1914, on the letterhead of the Erie Railroad Company and ask you if you have seen that letter before? A. I did.

Letter marked P 3 for identification.

Q. Under what circumstances did you first see this paper? A. When it was delivered at my home by the postman.

40

Q. Through the ordinary course of the mail? A. Yes, sir.

Q. I show you another letter purporting to be signed by R. W. Wallace, General Passenger Agent of the Erie Railroad Company on the letterhead of such company, under date of September 29th, 1914, and ask you if you have seen that letter before? A. I have.

10

Marked P 4 for identification.

Q. When and under what circumstances did you see this for the first time? A. I received it through the ordinary mail, and finding it when I arrived home from business.

Letters offered in evidence, and desire to say to the Court that the attorney for the defendant concedes that these letters were written with the authority of Mr. R. W. Wallace, General Passenger Agent.

20

Mr. STEVENS—We concede that they were written by him or under his authority, but we do not concede that they are legal evidence.

BY THE COURT—Why are they not legal evidence?

30

Mr. STEVENS—It is an unaccepted offer of compromise.

BY THE COURT—It is not an offer of compromise; it is an evidence of obligation in my judgment. An unaccepted offer of compromise is where a person agrees to accept so much and you agree to give so much. Received in evidence. Objection overruled. Exception.

40

It is stipulated by counsel for the defendant that these letters marked P 3 and P 4 for identification were written by Mr. Wallace, who was the General Passenger Agent of the Erie Railroad Company, or by his authority.

10

By the Court.

Letters admitted in evidence P 3 and P4. He offers them in evidence and you object on the ground that they are offers of compromise and illegal. Objection overruled. Exception.

By Counsel.

20

Q. As a result of your reception of these letters did you ever go to the railroad company's office A. I did not.

Q. How much money did you pay for cash fares after your ticket had been taken? A. Two dollars and ninety cents.

By the Court.

Q. That is for the balance of August? A. Yes, sir.

30

Q. And September you bought another commutation ticket? A. I was away during the month of September for part of the month and completed the month on a ten trip ticket, and the first of October I bought a commutation ticket.

Motion made to strike this out. Motion granted.

Cross-examination by Mr. Stevens.

40

Q. You say you commuted for six years or more,

on the New Jersey and New York Railroad? A. I have.

Q. Don't you know that the commutation ticket issued to a person only entitled the person to whom issued to ride on the train on that ticket? A. I do.

Q. You bought your ticket on the first of August? A. I did. 10

Q. What date did the conductor take it up? A. On the 29th.

Q. That is twenty-eight days, four weeks? A. Yes, sir.

Q. Did you ever look at that ticket? A. Only casually.

Q. You never gave it close study to see to who it was made out? A. I did not.

Q. You say that the date the ticket was taken was the 29th day of August, 1914? 20

By the Court—Is there any doubt about it. No use to waste time on it.

Q. Do you commute to the city on Sunday? A. I went down on Sunday.

Q. On what date? A. On the 30th of August.

Q. Did you return to Hackensack that evening? A. I returned Sunday at one o'clock. 30

Q. And you went down Monday morning and returned Monday evening. A. I did.

Q. How many times did you travel with Mr. Barr, the conductor that took your ticket? A. In all the years about a hundred.

Q. Are you sure it was a hundred? A. I never counted it.

By the Court—She cannot tell exactly.

Q. Are you sure it was not more than fifty? A. 40

I am sure it could easily have been more than a hundred.

Q. How much fare did you pay on the railroad train down and back? A. Five times I paid fifty cents for a ticket and on one night I paid forty cents.

10

Q. Did you receive a return slip? A. I received redemption slips but I did not think I could redeem them without my commutation ticket back.

By the Court.

Q. That is the ten cents excess fare? A. Yes, sir; having paid on the train.

Q. How many have you got? A. Five.

Re-direct examination by Mr. Maley.

20

Q. The attorney for the railroad company asked you if you did not know, from your experience, in commuting for six years that no one could ride upon a ticket except the person whose name was written thereon, although some one else might have bought it—did you understand his question when he asked you if you did not know from your experience from commuting six years that no one could ride upon the ticket other than a person whose name was written on the ticket, although someone else might have bought and paid for it, and you answered "yes." Did you understand his question?

30

BY THE COURT—I don't see how that is going to help us any.

PLAINTIFF RESTS.

40

MOTION TO NON-SUIT.

Motion made by Mr. Stevens for a non-suit on the following ground: That it was the duty of the plaintiff to examine her ticket to see if it was properly issued to her and upon learning that it wasnot so issued, it was her duty to return to the agents and have that ticket corrected, or a new ticket issued in lieu thereof. Further I move for a non-suit on the ground that the plaintiff had the ticket for a long enough time to charge her in law with knowledge of the fact that that ticket was made out to a Mr. when it should have been made out to a Miss, and by not going back to the ticket agent, to have it corrected or have a new one issued she was guilty of negligence in the using of the ticket.

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Motion denied on the law as laid down in the case of Zimmerman against the Erie Railroad Company, as charged by Judge Dixon, which I tried myself.

Exception asked and granted.

30

40

Mr. Frank E. Greenup, a witness produced for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Stevens.

Q. Mr. Greenup you are employed by the Erie Railroad? A. I am.

Q. As ticket agent at the Anderson Street Station, Hackensack? A. I am not just at present.

Q. Were you ticket agent in August, 1914? A. Yes, sir.

Q. How long had you been ticket agent before that? A. About a year.

Q. At that one station? A. That is the first day I went there.

Q. That is the first day you went to the Anderson Street station at Hackensack? A. Yes, sir.

Q. Do you remember issuing a ticket to I. H. Gerety? A. I do not.

By the Court.

Q. You remember the first day of the month, don't you? A. I remember it as the first.

Q. That is the day when a great many commutation tickets are taken, is it not? A. Yes.

Q. Were you there issuing tickets on the first of August last? A. I was.

Q. Taking in money and issuing tickets? A. I was.

Q. What was your custom; would a person hand in an old ticket and the money? A. Some would and very many would not.

Q. If a person handed in a ticket and the money and asked for a commutation ticket? A. I would issue the ticket in accordance with the old ticket.

Q. Do you remember a ticket being presented by Miss Gerety?

BY THE COURT—I don't think he can remember it.

Q. I show you this ticket that has been admitted in evidence and ask you if that is your handwriting? A. It is.

Q. I show you this ticket which has been admitted in evidence and ask you if that is your handwriting? A. No, sir; it is not. 10

By the Court.

Q. Whose handwriting is it so far as you know? A. I have not the slightest idea.

Q. Were you there in July? A. No, sir; I was not.

By Counsel. 20

Q. Did you ever see this ticket or stub before? A. No, sir; I did not.

By the Court.

Q. Where did you work before the first of August? A. I was clerk at Westwood, New Jersey.

Q. You mean station agent? A. Clerk, assistant agent.

Q. So when you came to Anderson street on the first of August you were entirely unfamiliar with the people there, were you not? A. I was. 30

By Counsel.

Q. Have you issued tickets to the plaintiff, Miss Gerety, since August 1st? A. No, sir; I have not.

By the Court.

Q. When did you leave this place over there? A. October 14th.

Q. Where did you go then? A. To River Edge. 40

By Counsel.

Q. Did you say that you had never seen that ticket before? A. I have not seen that ticket before.

By the Court—He did not say that, he said
10 he didn't recognize the handwriting.

By the Witness—I will swear that I never saw that ticket before.

By the Court.

Q. You mean to tell me that there was not some tickets handed in there that were July tickets? A. There may have been.

Q. Will you swear there was not? A. I will not swear that there was any.

20 Q. How can you say that that one was not handed in? A. My brother is agent there and all the tickets that were handed to me.

By the Court.

Q. I am asking you how you know? A. By the handwriting.

Q. Is that the only reason? A. That is all.

Q. You did not write on the old ticket that was handed in? A. No.

30 Q. How can you say that was not the ticket when the lady swears she handed the ticket in; you are under oath? A. To my recollection all the tickets handed to me had my brother's handwriting on it, and I know my brother's handwriting.

Q. It might have been that some others were handed in without your brother's handwriting? A. Yes.

Q. Can you tell how many were handed in that morning? A. No, sir.

40 Q. Do you remember the names? A. No, sir.

Q. You were issuing tickets very fast that morning? A. Might have been and might not have been. There were two of us there that morning.

Q. Who was the other one? A. My brother.

By Counsel.

10

Q. Do you remember being asked for a ticket for any one, man or lady, by the name of Gerety? A. I do not remember that.

Q. Except you know that is your handwriting? A. That is my handwriting.

Q. As a general rule, when a name is given to you through the window, or an old ticket is given to you and you are asked for a ticket, to who do you make out the tickets?

20

> BY THE COURT—He recollects here that he made out this ticket, and he does not recollect that; don't get him to testify to something he don't know anything about. I will not allow that.

Q. On the first day of August did you make out all commutation tickets for the month of August, according to the names given to you through the window? A. To the best of my knowledge.

30

By the Court.

Q. As the old tickets were handed in to you you made out the new ticket the same as the old tickets to the best of your recollection? A. I did.

> BY THE COURT—That is all she says and that is what she thought she got, and that is what the conductor thought she got and it kept on until the 29th day when some other man thought she did not.

40

Cross-examination.

Q. You say you seen that blue ticket the first of August, 1914? A. Yes, I did.

Q. How long did you last at Anderson Street Station after August first, 1914?

10 By the Court—Don't answer that.

Q. When were you transferred. When did the company take you out of Anderson Street Station and put you in River Edge? A. I am an extra agent, and go all over—

Q. Answer the question. A. October 24th.

Q. How many times did you talk to your lawyer about this case before to day? A. Once before.

Q. Were you ever investigated about this case?

20

Objected to. Objection sustained.

Q. Did anybody else go to see you about this besides this lawyer?

Objected to. Objection sustained.

Q. You heard the plaintiff in this case, Miss Gerety, testifying on the stand? A. I did.

Q. You heard her testify that the time she put 30 ten dollars in, she put that pink ticket in? A. I did.

Q. Will you say that she did not put it in? A. To the best of my recollection.

Q. You will not swear that she did not? A. No.

Re-direct examination by Mr. Stevens.

Q. If that ticket for July had been handed to you, what would you have done with it?

40 Objection to the question. Objection sustained.

John Barr, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Q. You are an employe of the New Jersey and New York Railroad Company? A. New Jersey and New York Railroad Company, yes. 10

Q. How long have you been with the company? A. Twenty-six years.

Q. How long have you been a conductor for that company? A. Twenty-four years.

Q. Have you always been a conductor on the New Jersey and New York, that runs from Anderson Street Station, in Hackensack, to Jersey City from Spring Valley? A. From Spring Valley and Haverstraw. 20

Q. Do you recollect the 29th day of August, 1914? A. Yes, sir.

Q. Do you recollect Miss Gerety having ridden on that train that day? A. Yes, sir.

Q. She handed you a ticket did she not? A. Yes, sir.

Q. To whom was that ticket made out?

Objected to. The ticket speaks for itself. 30

Q. Are you instructed by the railroad—

Objected to as leading.

By the Court—That is leading, that is sure.

Q. If a ticket, a commutation ticket, is handed to you for a passage, and it is made out to some one other than the person who hands you the ticket, what do you do with it?

40

Objected to on the ground that it is calling for a conclusion.

THE COURT—If you want to bring in the general rules of the company, there is a legal way for you to bring them in, but not this way.

10

Q. Mr. Barr, I show you this ticket that has been admitted in evidence, dated August 1st, 1914, have you seen that ticket before? A. Yes, sir.

Q. To who is that ticket made out?

Objected to. The ticket speaks for itself.

Q. Was that ticket presented to you on or about the 29th day of August, 1914? A. Yes, sir

20

Q. Who presented it? A. A young lady.

By the Court.

Q. Do you see her here? A. Yes, sir.

Q. Where is she? A. Right here.

Q. Sitting alongside of Mr. Maley? A. Yes, sir.

Q. The one that was on the stand? A. Yes, sir.

Q. What happened when she presented that to you? A. I examined the ticket and found out it was made out in a man's name.

30

Q. And then what happened? A. I asked the lady if this was her ticket and she said it was.

Q. What happened then? A. I told her that it was not made out for a lady's ticket.

Q. What happened then? A. She said it was her ticket.

Q. What happened then? A. I told her I could not honor that ticket for a lady because it was made out in a man's name.

40

Q. What happened then? A. She said "Well, if

you want to take it up, you can take it up and I will pay my fare."

Q. What happened then? A. She handed me a bill—

Q. Before she handed you a bill, what did you do, if anything? A. I first took the ticket up and punched it. 10

Q. Took a ride out of it? A. Well, as I was punching it I noticed the error.

Q. So you punched it before you saw it was "Mr.?" A. Yes, sir; at first glance.

Q. You had taken up that ticket? A. No, sir.

Q. So that day you not only took a punch out of that ticket which was a ride, but made her pay fare beside, didn't you? A. I would have made it good if she had asked me. 20

Q. Isn't that so? A. I punched the ticket before I noticed—

Q. And she paid her fare besides? A. Yes, sir.

By Counsel.

Q. You took the ticket up, did you not? A. Yes, sir.

Q. What did the plaintiff say to you when you took the ticket up? A. She said, you will be sorry for taking up the ticket. 30

Cross-examination.

Q. Did you ever see Miss Gerety before that? A. I presume I did.

By the Court.

Q. To recollect her? A. No, sir; I did not.

Q. She was not an ordinary commuter on your train? A. No, sir.

By Counsel. 40

Q. You heard Miss Gerety testify when she

was on the stand that she had ridden on your train and presented tickets to you that you accepted and cancelled, at least one hundred times?

BY THE COURT—In six years.

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Objected to on the ground that this ticket was not presented one hundred times. Also the witness has testified to the best of his knowledge and belief that he had never seen Miss Gerety before, and that Miss Gerety's testimony on the stand cannot be brought in cross-examination against him.

20

Q. In view of all that testimony do you still maintain that you have not seen Miss Gerety before?

A. I have possibly seen her lots of times.

Q. Do you maintain that she never rode on a train of which you were conductor, in view of that statement? A. Possibly she has.

Q. If she rode on that train and you were the conductor, you probably saw her? A. I probably saw her, but I didn't recognize her or know her by name.

30

Q. This train was about ten o'clock? A. Yes, sir; ten two.

Q. You always ran on that train? A. For the past three or four years.

Q. And before that you ran a train that left there about half past seven in the morning. A. Probably ten years ago.

Q. Within the last six years? A. No, sir.

Q. Will you swear to that? A. Yes, sir.

Q. Will you tell us everything that was said and done at the time you approached Miss Gerety?

40

Objected to on the ground that it is not proper cross-examination. Objection sustained. Exception.

Q. What is the first thing you did or said to Miss Gerety as you approached her to collect her fare? A. Before I said anything she handed me her ticket. 10

Q. What was the first thing you said or did? A. I asked her if this was her ticket.

Q. Represent as well as you can, just how you made that request. A. Just as I have just now.

Q. Repeat it in the same tone of voice? A. I said is this your ticket? I held the ticket in my hand, as I am holding it now.

Q. What did she say? A. She said "yes," and I said "it is made out in a man's name." 20

Q. Did you say it as nice and as calmly as you are saying it now? A, Yes, sir.

Q. Are you a married man? A. Yes, sir.

Q. What else did you say? A. She said "It is my ticket, she had nothing to do with the name on the ticket." I told her then, I could not honor the ticket with a man's name on it for a lady.

Q. Do you remember anything else? A. She says "If you don't want to honor the ticket, I will pay my fare, and if you take it up you will be sorry." 30

Q. Did you give her back the ticket at any time? A. No. I kept the ticket.

Q. Didn't you hear Miss Gerety testify that you gave her back the ticket? A. Yes.

Q. And then you conversed further about it and took the ticket away again? A. I don't recollect anything about that part.

Q. That would not be true if she did testify to it.

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Objected to; it is not a proper question for cross-examination.

A. I don't say it is not true exactly, but I will say, to the best of my knowledge, I don't recollect t.

10 Q. Didn't you snap that ticket out of her hand and say, "Oh, well, if that is the way you feel about it, I will take the ticket away?" A. No, sir.

Objected to on the ground it is not cross-examination.

By the Court—The objection came too late.

Q. Didn't you state that the reason why you took

20 that ticket up was because Miss Gerety went up in the air?

Objected to. Objection sustained.

Q. Didn't you tell her she could not ride on this ticket because it was not made out to her and didn't belong to her? A. Yes, sir; that is what I told her.

Q. How did you know it did not belong to her?

30

Objected to as calling for a conclusion.

Objection sustained. Exception.

Defendant Rests.

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MOTION FOR DIRECTION OF VERDICT

During the argument the counsel for defendant objected to a statement by counsel for plaintiff that the mere fact of the taking up of the ticket was an insult.

BY THE COURT—I will rule that out.

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Motion for direction of verdict.

Motion made for a direction of a verdict. Motion denied. Exception.

The ground of the motion is as follows: "It is very clear that this action is not grounded upon the injurious act of the defendant or its ticket agent, in issuing an alleged improper ticket, but upon the conductor's denial of the plaintiff's right to travel upon the ticket that was presented to him, viz., a ticket that on its face negatived the right that was claimed under it by the plaintiff; and also for alleged abusive and insulting language used by the conductor to the plaintiff at the time of lifting said ticket. In this case the ticket was issued to a person by the name of "Mr. I. H. Gerety;" the person who attempted to ride on it was "Miss I. H. Gerety;" the result is that she had no right to ride on the ticket, for on these points the law is settled by the two cases of Shelton vs. Erie R. R. Co. (73 N. J. L., 558), and Colton vs. D. L. & W. R. R. Co. (80 N. J. L., 592).

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THE JUDGE'S CHARGE TO THE JURY.

GENTLEMEN OF THE JURY:

This suit is brought by the plaintiff against the defendant, the New Jersey and New York Railroad Company, a corporation, to recover damages resulting, it is claimed, by the plaintiff for issuing to the plaintiff an improper ticket, and by that reason, by one of their agents causing the plaintiff to expend money which she would not have otherwise expended, and also caused her inconvenience, mental anguish and suffering. The law unquestionably is that no person has a right to ride upon a ticket issued to that person, when it comes to a commutation ticket, and if this was a suit brought to recover for physical injuries by reason of the conductor having put the plaintiff off the train because of this ticket, which is offered in evidence here, being indicated that it is meant for a man instead of a woman, what would be on the ticket would be conclusive evidence as against the plaintiff that she was riding on the wrong ticket and the plaintiff could not recover, but there is no evidence here of any injury because of the plaintiff being put off the train. The plaintiff paid her fare. The law places upon the plaintiff before she can recover in this case the duty of using reasonable care. That is, taking such action as a reasonable man would take in ascertaining whether the ticket she bought was a ticket for her. Notwithstanding the carelessness or negligence of the agent who issued the ticket, even if the agent of the railroad was negligent and careless in issuing the wrong ticket to this plaintiff, the plaintiff cannot recover if she could have ascertained, or ought to have ascertained it was a wrong ticket by using reasonable care; not extraordinary care, but reasonable care. What a reasonable person would do under the circum-

stances. And the question whether she used reasonable care or not, or whether this ticket was issued negligently, carelessly, or wrongfully by the agent are questions of fact for to pass upon.

Now you have the testimony: She says she went to the office that morning, and there were a number of people there, in fact so many that she lost her train, and handed in a ten dollar bill together with her ticket; which seems to say, Miss I H. Gerety, which she had been using during July. The "Miss" on that ticket, you will examine it, to me looks like two lines, one a little bit wavy, with a dot over end, but the other one crosses the "M;" but it passes for "Miss" in July. She says she was handed out a ticket and change for ten dollars and the old ticket back by the agent of the company, and there is no denial that that was done. And you can see what is on that ticket. Now, that ticket on close examination might be taken for Mr. She says she got on the train, and as I understand there is another end on this ticket before you commence to stamp them off. There is no testimony as to what is on that end, but the conductor on the train took that end and stamped her ticket. And in considering the question as to whether she used reasonable care or not, you have a right to consider the conduct of the conductor who took the ticket for the first time, the new ticket and took the end off and stamped it as "O. K." and handed it back good for a ride. You have a right in determining, whether she used reasonable care or not, whether she was chargeable with anything more than she did, to consider the fact that it was stamped for twenty-seven or twenty-eight days after that on the regular train and passed. You also have the testimony of the conductor who took it up, and he says that when it first passed in his hands he cut the ride out, he

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passed it by. But he said he looked at it again. Now, it is for you to say whether what caused him to look at it was the fact that this lady was not one of his regular commuters, a stranger apparently to him, and whether his examination of the ticket was the examination of ordinary care which the conductor is to use in looking at the ticket and passengers or whether it was extra care; and that is why he ascertained it was issued to a man instead of a woman. She is not chargeable with using extra care; she is only chargeable with using ordinary care. Because she had a right when handing in her old ticket with her money and getting back change with the request to hand her out a commutation ticket, to presume that it was a good ticket for her to travel on. Of course that does not relieve her from ordinary care to see that it was a good ticket. And it is for you to say whether she used ordinary care. If she used ordinary care, taking into consideration the fact she used it day after day, being a commuter for this length of time, it being handed out with her old ticket, then she is entitled to recover, because there is no question as to whether the ticket was for a Mr. or a Miss; they took it away from her; she was deprived of its use. And the next question is, how much is she entitled to recover. In the first place, she is entitled to recover the money she paid out to permit her to go up and down week days and Sundays because she had enough rides on this ticket left to have gone up and down seven days more trips than what she paid for. There were more trips than there were days in the month. Now, she is entitled to recover besides that, for the indignity which she suffered by having that ticket taken away from her. She is entitled to recover for her feelings of distress and mental anguish that came from her being made a

public spectacle, without the conductor saying anything to her, by the mere taking of the ticket away from her caused some commotion in the car and beside that she is entitled to recover for a continuation of those feelings. She did not get ill because she was able to travel the next day and the following, but she says she had some trouble. It is for you to say what the amount is and what would compensate her in money for that amount. Now, gentlemen, you are not to fix this verdict large because this is a railroad company that has to pay, neither must you fix it small. But you must fix it for what you think is a fair and reasonable basis that would compensate this plaintiff for the money she has paid out and the mental suffering she has had because of this mistake and careless act of the agent of the railroad company; if you find that the agent was careless, and providing you find that she used reasonable care so as to ascertain there was a mistake or not; and if you find that she did that, then you find your verdict for such an amount, in addition to the amount she paid out and use your judgment. Take the matter and consider it carefully and weigh it in such a way that the verdict will square with your conscience; so that you deal, not only justly with the plaintiff, but with the railroad company.

I decline each one of these requests that have been made except so far as I have charged them. And will allow an exception to counsel for plaintiff and defendant.

Plaintiff excepted to the Court's charge: Except to that portion of the Court's charge, where the Court charged that the plaintiff could not recover as she was bound to use ordinary diligence, or reasonable care, and I desire the Court to charge the

law as laid down in the case of Zimmerman vs. The New York Lake etc. R. R.

Defendant excepted to the Court's charge as follows: I except to that portion of the Court's charge as relates to the right of the jury to presume whether or not the plaintiff used reasonable care to ascertain as to who the ticket was issued from the fact that the first conductor on the first ride stamped off the ticket. Exception allowed.

I desire to except to that portion of the Court's charge which dealt with the proposition that the plaintiff had the right to presume that she received a valid ticket, that is, a ticket issued to herself Exception allowed.

I also desire to except to that portion of the Court's charge which deals with the question of damages wherein the Court instructed the jury that the plaintiff was entitled to recover, besides t e amount of money spent for the indignity and suffering by having the ticket taken. Exception allowed.

The jury retired and rendered a verdict of three hundred and two dollars and ninety cents.

PLAINTIFF'S REQUESTS TO CHARGE.

I. I charge you that it is an obligation of a railroad company, with respect to the acts of its agent, to deliver to passengers the tickets for which they ask and pay; if this is not done, whether the fault be that of the agent or company, this obligation is

broken and the company is liable for the damages that result therefrom.

Shelton vs. Erie Railroad Co., 44 Vroom, p. 564.

II. I charge you that it is a question for you to decide whether a person applying for a ticket at a railroad station is bound, in the exercise of ordinary care, to read the ticket. If you find that a person is not, under such circumstances, bound to read the ticket offered him, and on application for a certain ticket the agent give him the wrong ticket, the company is estopped from denying that it is the ticket for which he applied. 10

Zimmerman vs. N. Y., Lake Erie, etc., R. R. Co , 17 N. J. L., J., p, 7. 20

III. If you find as a matter of fact that the station agent issued to the plaintiff a wrongful ticket and the conductor took this ticket from the plaintiff and caused her to suffer damage thereby with no other culpable and inefficient agency intervening between the defendant's dereliction and the injury, I charge you as a matter of law that the plaintiff's injuries are the result of the ticket agent's wrongful act. 30

Wiley vs. West Jersey R. R. Co., 44 N.J.L., p. 248.

IV. If you find that the plaintiff suffered injuries because of the ticket agent's wrongful act, I charge you she is entitled to recover damages for mental suffering, shame, mortification, humiliation, insult, indignity and ignomy put upon her.

All vs. Camden, etc., Steamboat Ferry Co., 46 N. J. L., p. 198. 40

V. I charge you that it is a recognized right of passengers not only to be safely and promptly carried to their destinations but also to be treated by the servants and agents of a common carrier with kindness, respect, courtsy and due considerations and to be protected again insults, indignities and
10 abuse from both the agent and other passengers.

McGinnis vs. Missouri Pac. R. R. Co., 21 Mo. App., p. 399.

DEFENDANT'S REQUEST TO CHARGE.

I. It was the duty of the plaintiff to examine the
20 ticket, and upon discovering that it had been issued to "Mr. I. H. Gerety" instead of "Miss I. H. Gerety," she should have returned the same to the ticket agent, and have him correct the mistake, or request him to issue her a new one. Not having done so, she is not entitled to recover any damages.

II. In considering the amount of damage sustained by the plaintiff, you must disregard any evidence introduced or attempted to have been introduced by the plaintiff to any conversation be-
30 tween her and the conductor and you must limit your finding of any damage to the exact amount expended by the plaintiff for railroad fare after the commutation had been taken up by the conductor.

III. You must disregard any evidence introduced or attempted to be introduced, in arriving at your verdict, of any letters written by the General Passenger Agent of the defendant to the plaintiff, because the law is well settled that "an offer made by one litigating party to the other is competent
40 evidence for the latter, unless it is expressly stated

that it is made without prejudice, or unless the party making it has been led to believe by the conduct of the adversary that a compromise may probably be effected," Miss Gerety's visit to the General Passenger Agent of the defendant to see about the redemption of her ticket, is such conduct on her part as to lead the defendant to believe that a compromise may probably be effected. 10

COPIES OF EXHIBITS.

P 3.

Erie Railroad Company 20

Office of the General Passenger Agent.

Sept. 14, 1914.

Miss I. H. Gerety,
33 Linden St.,
Hackensack, N. J.

Dear Madam—Referring to your recent call at this office and subsequent telephone conversation relative to the lifting of your August commutation ticket No. 186 by conductor of train 622, on August 29th, would say that we have made a complete in vestigation, and if you will call at this office and present receipts for fares which you were compelled to pay account the above ticket being lifted, we will be glad to refund the amount of fare, cancel the same number of rides from your August commutation ticket, which is now in our possession. 30

Yours truly,

R. W. WALLACE,

General Passenger Agent. 40

EXHIBIT P 4

P 4.

Erie Railroad Company

Office of the General Passenger Agent.

Sept. 29th, 1914.

Miss I. H. Gerety,
10
33 Linden St.,
Hackensack, N. J.

Dear Madame—Please refer to our letter of Sept. 14th, which referred to your call at this office relative to your August commutation ticket, which was lifted by the conductor on our train 622, on August 29th.

If you do not find it convenient to call at this office and present the receipts, which you hold on
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that account, if you will mail them to this office, we will arrange to make proper refund.

Yours truly,

R. W. WALLACE,

General Passenger Agent.

I hereby certify that the transcript of testimony attached hereto is a copy of the testimony in the above case, as taken down and transcribed by a
30
stenographer duly sworn, at the trial of said cause.

IN WITNESS WHEREOF, I have hereunto set my hand as Judge of the District Court of the Third Judicial District of the County of Bergen, this 10th day of April, A. D. 1915.

PETER W. STAGG,

Judge.

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RULE TO SHOW CAUSE.

Filed March 30th, 1915.

This matter being opened to the Court by Collins & Corbin, attorneys for the defendant, upon an application for a rule to show cause why a new trial should not be granted in the above entitled cause, and sufficient reason appearing: 10

It is, on this twenty-third day of March, nineteen hundred and fifteen, ordered, that the plaintiff show cause before this Court, at the Court House at Hackensack, N. J., on the ninth day of April, nineteen hundred and fifteen, at two o'clock in the afternoon, or as soon thereafter as the matter may be heard, why a new trial should not be granted in the above entitled cause. 20

And it is further ordered, that in the meantime, and until the further order of this Court, all proceedings in said cause and on the execution issued on the judgment, be and the same are hereby stayed.

And it is further ordered, that the granting of the within rule to show cause shall not be a waiver of any grounds for appeal existing in favor of the defendant. 30

PETER W. STAGG,
Judge.

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REASON.

Filed March 30th, 1915.

The verdict found by the jury was excessive.

COLLINS & CORBIN,
Attorneys of Defendant.

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ORDER.

Filed March 30th, 1915.

It appearing that, on the twenty-third day of March, nineteen hundred and fifteen, it was ordered that the plaintiff show cause before this Court, at the Court House at Hackensack, N. J., on the ninth day of April, nineteen hundred and fifteen, at two o'clock in the afternoon, or as soon thereaf-
20 ter as the matter may be heard, why a new trial should not be granted in the above entitled cause.

And it was further ordered, that in the meantime, and until the further order of the Court, all proceedings in said cause and on the execution issued on the judgment be stayed.

And it is further ordered, that the granting of the said rule to show cause should not be a waiver of any grounds for appeal existing in favor of the defendant.

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It is, on this twenty-ninth day of March, nineteen hundred and fifteen, upon application of Collins & Corbin, attorneys for the defendant, further ordered, that so far as concerns the time within which an appeal may be taken, judgment in the above matter shall not be considered as entered until such rule to show cause, granted on the twenty-third day of March, nineteen hundred and fifteen, has been disposed of.

PETER W. STAGG,
Judge.

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SUPREME COURT OF NEW JERSEY.

IDA H. GERETY,
Plaintiff Appellee,
vs.
THE NEW JERSEY AND NEW YORK RAILROAD COMPANY, A CORPORATION,
Defendant-Appellant.

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SPECIFICATION OF POINTS OF APPELLANT.

Filed April 28th, 1915.

The New Jersey and New York Railroad Company, defendant below and appellant herein, herewith files its specification of the determinations and directions of the Third Judicial District Court of the County of Bergen with respect to which it is dissatisfied in point of law.

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1. The Court, over the objection of the defendant's counsel, admitted the two letters from R. W. Wallace, General Passenger Agent, marked P 3 and P 4, in evidence, whereas the said letters should not have been admitted.

2. The Court, over the objection of defendant's counsel, refused to non-suit the plaintiff, whereas said non-suit should have been granted for one or more of the following reasons:

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(a). It was the duty of the plaintiff to examine her ticket to see if it was properly issued to her, and upon learning that it was not so issued it was her duty to return to the agent and have that ticket corrected, or a new ticket issued in lieu thereof.

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(b). That the plaintiff had the ticket for a

long enough time to charge her in law with knowledge of the fact that that ticket was made out to a Mister, Mr., when it should have been made out to a Miss, and by not going back to the ticket agent, to have it corrected or have a new one issued, she was guilty of negligence in the using of the ticket.

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3. The Court erred in refusing to charge the following request submitted in behalf of defendant:

"It was the duty of the plaintiff to examine the ticket, and upon discovering that it had been issued to 'Mr. I. H. Gerety' instead of 'Miss I. H. Gerety,' she should have returned the same to the ticket agent, and had him correct the mistake, or request him to issue her a new one. Not having done so, she is not entitled to recover any damages."

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Such refusal was error and prejudicial to the defendant.

4. The Court erred in refusing to charge the following request submitted in behalf of the defendant:

"In considering the amount of damages sustained by the plaintiff, you must disregard any evidence introduced or attempted to have been introduced by the plaintiff to any conversation between her and the conductor, and you must limit your finding of any damage to the exact amount expended by the plaintiff for railroad fare after the commutation had been taken up by the conductor."

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Such refusal was error and prejudicial to the defendant.

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5. The Court erred in refusing to charge the fol-

lowing request submitted in behalf of defendant:

> "You must disregard any evidence introduced or attempted to be introduced, in arriving at your verdict, of any letters written by the General Passenger Agent of the defendant to the plaintiff, because the law is well settled that 'an offer made by one litigating party to the other is competent evidence for the latter, unless it is expressly stated that it is made without prejudice, or unless the party making it has been led to believe by the conduct of the adversary that a compromise may probably be effected.' Miss Gerety's visit to the General Passenger Agent of the defendant to see about the redemption of her ticket, is such conduct on her part as to lead the defendant to believe that a compromise may probably be effected."

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Such refusal was error and prejuicial to the defendant.

6. The Court erred in charging the jury, over the exception of the defendant's counsel, as follows:

> "You have a right in determining whether she used reasonable care or not; whether she was chargeable with anything more than she did, to consider the fact that it was stamped for twenty-seven or twenty-eight days after that on the regular train and passed."

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7. The Court erred in charging the jury, over the objection of the defendant's counsel, as follows: ;

> "She is not chargeable with using extra care she is only chargeable with using ordinary care. Because she had a right when handing in her old ticket with her money and getting back change with request to hand her out a

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commutation ticket, to presume that it was a good ticket for her to travel on. Of course that does not relieve her from ordinary care to see that it was a good ticket. And it is for you to say whether she used ordinary care."

10 8. The Court erred in charging the jury, over the objection of the defendant's counsel, as follows:

"In the first place, she is entitled to recover the money she paid out to permit her to go up and down week days and Sundays, because she had enough rides on the ticket left to have gone up and down seven days more trips than what she paid for. There were more trips than there were days in the month. Now she 20 is entitled to recover besides that for the indignity which she suffered by having that ticket taken away from her. She is entitled to recover for her feelings of distress and mental anguish that came from her being made a public spectacle, without the conductor saying anything to her; by the mere taking of the ticket away from her caused some commotion in the car, and beside that she is entitled to recover for a continuation of those feelings."

30 COLLINS & CORBIN,
Attorneys of Defendant-Appellant.

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OPINION OF SUPREME COURT.

(Filed November 5, 1915.)

The plaintiff sued the railroad company to recover the damages resulting to her from the failure of its ticket agent to deliver to her the ticket for which she asked and paid, and for delivering to her instead thereof a commutation ticket that read *Mr.* I. H. Gerety, instead of *Miss* I. H. Gerety, which ticket in consequence of said mistake was "taken up" by one of the company's conductors. The plaintiff's action is not for the taking up of the ticket or for refusal to permit her to ride thereon, but for damages for the failing to deliver to her the ticket for which she had asked. The action therefore is not within the decision in the case of Shelton v. Erie R. R. Co. (73 N. J. L., p. 558), but it is within the illustrative dictum made therein, viz.: "The obligations of the company with respect to the acts of this agent (the ticket agent) is that he shall deliver to passengers the tickets for which they ask and pay; if this is not done, whether the fault be that of the agent or the company, this obligation is broken and the company is liable for the damages that result therefrom.

In the present case the plaintiff had a July commutation ticket reading "Miss I. H. Gerety," which she handed to the ticket agent with a ten dollar bill when she asked for her August commutation ticket. The agent returned to her the July ticket, the change of the ten dollar bill and the August ticket, upon which she travelled until the 29th day of August, when it was taken up by a conductor who noticed the mistake.

Upon the appeal of the railroad company from the judgment that was rendered in favor of the plaintiff upon the verdict of a jury the appellant contends that there should have been a non-suit.

This contention rests upon a failure to distinguish the present case from cases such as Shelton v. The Erie R. R. Co.

Whether or not the plaintiff noticed or ought by reasonable care to have noticed the mistake could not be determined by the Court. The fact that until
10 within a day or two of the expiration of the ticket the mistake had not been noticed by the defendant's conductors whose duty it was to detect such mistakes is somewhat eloquent evidence that it was a question of fact for the jury to which it was left under a charge that was quite as favorable to the defendant as the case permitted.

Comment

The rule charged as to the measure of damages for the indignity and mental distress incident to the occurrence from the mistake of the ticket agent
20 was correct.

There was no error in admitting in evidence the letters of the defendant's general passenger agent, who had taken up with the plaintiff the mistake by the local agent. These letters were within the scope of the authority of their writer, and were in no sense offers of compromise or settlement of a pending or threatened litigation.

It is a stronger case than that of Agricultural Insurance Co. v. Potts (55 N. J. L., p. 158).

30 Finding no error that should lead to a reversal the judgment of the District Court of the County of Bergen is affirmed.

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GROUNDS OF APPEAL

NEW JERSEY SUPREME COURT.

IDA H. GERETY, *Plaintiff-Appellee,* *vs.* THE NEW JERSEY and NEW YORK RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	*Notice and Grounds of Appeal.*

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To Patrick Henry Maley, Esq.,
Attorney for Plaintiff-Appellee.

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SIR:—Please take notice, that the defendant-appellant appeals to the Court of Errors and Appeals of New Jersey from the whole of the judgment entered in this case on the following grounds:

× Quote

1. The Third Judicial District Court of the County of Bergen, over the objection of the defendant's counsel, admitted the two letters from R. W. Wallace, General Passenger Agent, marked P 3 and P 4, in evidence, whereas the said letters should not have been admitted.

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2. The said Court over the objection of defendant's counsel, refused to non-suit the plaintiff, whereas said non-suit should have been granted for one or more of the following reasons:

(a). It was the duty of theplaintiff to examine her ticket to see if it was properly issued to her and upon learning that it was not so issued it was her duty to return it to the agent and have that ticket corrected, or a new ticket issued in lieu thereof.

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GROUNDS OF APPEAL

(b). That the plaintiff had the ticket for a long enough time to charge her in law with knowledge of the fact that the ticket was made out to a Mister, Mr., when it should have been made out to a Miss, and by not going
10 back to the ticket agent, to have it corrected or have a new one issued, she was guilty of negligence in the using of the ticket.

3. The said Court erred in refusing to charge the following request submitted in behalf of defendant.

"It was the duty of the plaintiff to examine the ticket, and upon discovering that it had been issued to 'Mr. I. H. Gerety' instead of 'Miss I. H. Gerety,' she should have returned the same to the ticket agent, and had him cor-
20 rect the mistake, or request him to issue a new one. Not having done so, she is not entitled to recover any damages."

Such refusal was error and prejudicial to defendant.

4. The said Court erred in refusing to charge the following request submitted in behalf of the defendant:

"In considering the amount of damage sus-
30 tained by the plaintiff, you must disregard any evidence introduced or attempted to have been introduced by the plaintiff to any conversation between her and the conductor, and you must limit your finding of any damage to the exact amount expended by the plaintiff for railroad fare after the commutation had been taken up by the conductor."

Such refusal was error and prejudicial to the defendant.

40 5. The said Court erred in refusing to charge

the following request submitted in behalf of the defendant:

> "You must disregard any evidence introduced or attempted to be introduced, in arriving at your verdict, of any letters written by the General Passenger Agent of the defendant to the plaintiff, because the law is well settled that 'an offer made by one litigating party to the other is competent evidence for the latter, unless it is expressly stated that it is made without prejudice, or unless the party making it has been led to believe by the conduct of the adversary that a compromise may probably be effected.' Miss Gerety's visit to the General Passenger Agent of the defendant to see about the redemption of her ticket, is such conduct on her part as to lead the defendant to believe that a compromise may probably be effected."

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Such refusal was error and prejudicial to the defendant.

6. The said Court erred in charging the jury, over the exception of the defendant's counsel, as follows:

> "You have a right in determining whether she used reasonable care or not; whether she was chargeable with anything more than she did, to consider the fact that it was stamped for twenty-seven or twenty-eight days after that on the regular train and passed."

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7. The said Court erred in charging the jury, over the objection of the defendant's counsel, as follows:

> "She is not chargeable with using extra care; she is only chargeable with using ordinary care. Because she had a right when handing

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> in her old ticket with her money and getting back change with request to hand her out a commutation ticket, to presume that it was a good ticket for her to travel on. Of course, that does not relieve her from ordinary care to see that it was a good ticket. And it is for you to say whether she used ordinary care."

8. The said Court erred in charging the jury, over the objection of the defendant's counsel, as follows:

> "In the first place, she is entitled to recover the money she paid out to permit her to go up and down week days and Sundays, because she had enough rides on this ticket left to have gone up and down seven days more trips than what she paid for. There were more trips than there were days in the month. Now, she is entitled to recover beside that for the indignity which she suffered by having that ticket taken away from her. She is entitled to recover for her feelings of distress and mental anguish that came from her being made a public spectacle, without the conductor saying anything to her; by the mere taking of the ticket away from her caused some commotion in the car, and besides that she is entitled to recover for a continuation of those feelings."

9. The Supreme Court affirmed the judgment of the said District Court, whereas the said Supreme Court should have reversed the said judgment for one or more of the reasons alleged in the said Supreme Court.

COLLINS & CORBIN,
Attorneys for Defendant.

ORDER ON AFFIRMANCE OF JUDGMENT.

(Filed January 20, 1916.)

This cause having been duly argued at the June Term, 1915, of this Court, by Patrick Henry Maley, Esq., counsel for plaintiff-appellee, and Collins & Corbin, Esqrs., of counsel for defendant-appellant, and the Court having considered the same and finding no error in the record or proceeding in the Third District Court of the County of Bergen. It is therefore ordered and adjudged that the judgment of the Third District Court of the County of Bergen be affirmed with costs.

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Entered January 20, 1916.

On motion of

PATRICK HENRY MALEY,
Attorney for Plaintiff-Appellee.

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JUDGMENT RECORD

NEW JERSEY SUPREME COURT.

IDA H. GERETY, vs. THE NEW JERSEY AND NEW YORK RAILROAD COMPANY.	*Judgment Record. On Appeal. Affirmance. Patrick Henry Maley, Atty.*

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Pursuant to the statute, in such case made and provided, the said defendant, The New Jersey and New York Railroad Company, appeals to the Supreme Court from the judgment entered against it in favor of Ida H. Gerety, the transcript of judgment being in the words and figures following, to wit:

20

The District Court of the Third Judicial District of the County of Bergen.

IDA H. GERETY, *Plaintiff*, vs. NEW JERSEY AND NEW YORK RAILROAD, *Defendant*.	*In Tort. Demand, $500.00.*

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Plaintiff's demand was filed Feb. 17th, A. D. 1915.

March 19th, A. D. 1915, the plaintiff appeared and the defendant appearing and the trial of the cause was proceeded with.

Whereupon it is on this nineteenth day of March, A. D. 1915, by the jury considered and adjudged

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that said Ida H. Gerety have judgment against the said defendant as follows:

That the said plaintiff recover against the said defendant the sum of three hundred and two dollars and ninety cents damages and twenty-four dollars and fifty cents costs of suit. 10

Here follows the Specification of Points filed by the defendant appellant in Supreme Court. (See Specification of Points of Appellant, pp. of State of Case.)

This cause was heard before our Supreme Court at the June Term, 1915, and judgment of affirmance was rendered in favor of the plaintiff, November 5, 1915.

Whereupon it is adjudged that the said plaintiff, Ida H. Gerety, do recover against the said defendant, The New Jersey and New York Railroad Company, the sum of three hundred and twenty-seven dollars and forty cents, damages and costs below; and also the sum of twenty-nine dollars, for her costs in the Supreme Court, making in the whole the sum of three hundred and fifty-six dollars and forty cents. 20

Judgment entered January 20, 1916.

WM. S. GUMMERE, C. J.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office. 30

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-seventh day of January, A. D. nineteen hundred and sixteen.

[Seal.]

WM. C. GEBHARDT, Clerk. 40