

INDEX.

	PAGE.
Notice of Appeal	1
Declaration	3
Plea	4
Amended Answer	5
Judgment	6
Motion for Non-suit	18
Charge to the Jury.	39
Requests to Charge	41
Exceptions to Charge	42

TESTIMONY.

Plaintiff's Witnesses.

JAMES F. CARROLL

Direct	8
Cross	9

FREDERICK A. MALLERY

Direct	11
Cross	14

Defendant's Witnesses:

FRANK L. BOTT.

Direct	21
Cross	24
Re-direct	25

TIMOTHY BURNS.

Direct	25
Cross	26
Re-direct	27
Re-cross	29
Re-direct	29

FRED T. PARET	PAGE
Direct	30
Cross	31
Re-direct	32
Re-cross	32
GEORGE J. RYERSON.	
Direct	32
Cross	33
MRS. BERTHA RYERSON.	
Direct	35
Cross	35
Re-direct	36
TIMOTHY BURNS (Recalled)	
Direct	37

In Rebuttal.

FREDERICK A. MALLERY.	
Direct	37
Cross	38

NOTICE OF APPEAL.

(Filed June 27, 1913.)

To

MESSRS. LEFFERTS & LEFFERTS,
Attorneys of Plaintiff.

SIRS:

Take notice that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds: 10

1. The judge before whom the case was tried refused to non-suit the plaintiff when thereunto moved, whereas said motion should have been granted for one or more of the following reasons:

(a) It did not appear that the defendant caused the arrest; 20

(b) The defendant or its agents had probable cause to suspect that the plaintiff had violated the statute, being Section 59 of the General Railroad Law.

2. The trial judge refused to charge the jury as follows when thereunto requested by the defendant: "The jury are directed to find a verdict in favor of the defendant."

3. The trial judge erroneously charged the jury as follows: 30

"Now, the question whether or not the plaintiff, having paid his fare on train 175 to Passaic, knowingly and wilfully proceeded on the train beyond such distance to Paterson without previously paying the additional fare from Passaic to Paterson, and with intent to avoid payment thereof, is a question of fact 40

NOTICE OF APPEAL

for you to decide from all the evidence in the case."

4. The trial judge erroneously charged the jury as follows:

10 "So you see, then, Gentlemen, it is a question of fact for you to say whether this plaintiff knowingly and wilfully intended to ride without the payment of the fare."

5. The trial judge erroneously charged the jury as follows:

20 "Now in an action of trespass such as this for an alleged arrest and false imprisonment, the defendant may be justified by showing probable cause for said arrest, but the facts or circumstances must be sufficiently suspicious to induce a discreet person to believe that the party was guilty of the charge complained of and which has been committed."

30 "And the other side of the question for you to say is whether this defendant company had probable cause for the arrest. If you find that there was probable—to use the expression of the Court—probable cause for the arrest, you will find for the defendant."

40 "The burden of proof is upon the plaintiff to satisfy you by a fair preponderance of the evidence that he has made out his case under this rule of law, under the statute. If you are not so satisfied,

DECLARATION

and the evidence satisfies you there was probable cause for the arrest, then your verdict should be for the defendant."

COLLINS & CORBIN,

Attorneys of Appellants.

DECLARATION.

(Filed April 26, 1912.)

Passaic County, ss.:

The Erie Railroad Company, the defendant in this suit was summoned to answer unto Frederick A. Mallery, the plaintiff therein, in an action of tort, and thereupon the said plaintiff by Lefferts & Lefferts, his attorneys, complains:

For that whereas the said defendant heretofore, to wit, on or about the eighteenth day of October, nineteen hundred and eleven, in the City of Paterson, County of Passaic and State of New Jersey, was, through its agents and servants operating a steam railroad and engaged as a common carrier of passengers in said State and thereabouts; that at the time and place first aforesaid, the said agents and servants of the defendant, to wit, the conductor and collector of fares and tickets while actually engaged in the performance of their duties and acting within the scope of their authority, then and there during the time the said plaintiff was a passenger of said defendant, a common carrier of passengers as aforesaid, with force and arms assaulted the plaintiff and then seized and laid hold of the plaintiff, and with great force and violence pulled and dragged him about, and also then imprisoned the plaintiff and kept and detained him in prison for a long time, to wit, four hours or thereabouts, and forced and compelled the

10

20

30

40

PLEA

10 plaintiff to go to court and forcibly conveyed him
in custody in and along divers public streets and
highways to a certain police station and there im-
prisoned the plaintiff and kept and detained him
in prison without any reasonable or probable cause
whatsoever for a long space of time, to wit, for the
20 space of two hours, contrary to law and under a
false and unreasonable assertion, color and charge
that the plaintiff had committed an offense punish-
able by law, to wit, that he had committed an act
in violation of Section 59 of an act entitled "An
Act Concerning Railroads" Revision of 1903, ap-
proved April 14th, 1903, and had knowingly and
wilfully been carried by the said defendant, the
said common carrier of passengers, to a point
north of his destination, the City of Passaic, to
20 wit, to the City of Paterson, with the intention to
defeat and defraud the defendant in the payment
of his fare, whereby the plaintiff was greatly hurt
and suffered great anguish and pain of mind and
body and was prevented from attending to his
lawful affairs and was also thereby then greatly
exposed and injured in his credit, reputation and
circumstances, and was subjected and put to di-
vers expenses, to wit, in the sum of One Hundred
Dollars in order to obtain and in obtaining his
30 liberation from said imprisonment, and thereby
also sustained other wrongs, to wit, in the sum of
Five Thousand Dollars, Therefore he brings his
suit.

Dated April 15th, 1912.

PLEA.

(Filed May 1, 1912.)

40 And the said defendant Erie Railroad Company,
by Collins & Corbin, its attorneys, comes and de-
fends the wrong and injury, when, &c., and says

AMENDED ANSWER

that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it. And of this the said defendant puts itself upon the country, &c.

10

AMENDED ANSWER.

(Filed July 11, 1912.)

1. Defendant denies the truth of the matters contained in the complaint.

2. Defendant had probable cause to make the charge set forth in the plaintiff's complaint and to arrest the plaintiff thereunder by reason of the following facts, to wit: plaintiff embarked on a train of this defendant known as train 175, leaving Jersey City at 9.30 A. M., October 18th, 1911, and presented to defendant's agents a ticket giving the plaintiff the right to travel on said train as far as the station known as Passaic, and no further; plaintiff did not alight from said train when it reached Passaic, but, on the contrary, remained on said train and refused to pay fare or present other transportation as evidence of his right to ride on said train beyond Passaic, and when requested by the defendant's agents to pay fare or present further transportation for riding beyond Passaic, said he would not do so, although the defendant's agents informed him that under the rule of the defendant and under the law of the State of New Jersey, he was required to pay such additional fare or present such further transportation; and thereupon the defendant, having probable cause to suspect that the plaintiff having paid his fare for a certain distance, to wit,

27

30

40

JUDGMENT

from Jersey City to Passaic, was knowingly and wilfully proceeding on such train beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid the payment thereof, filed a complaint against the plaintiff and caused the plaintiff to
 10 be arrested pursuant to the provisions of Section 59 of the Statute entitled "An Act Concerning Railroads (Revision of 1903)."

 JUDGMENT.

(Entered June 3, 1913.)

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Paterson in and for
 20 the County of Passaic, on the fourth Tuesday of April, in the year of Our Lord one thousand nine hundred and thirteen, by whom etc., and the same day is given to the parties aforesaid there etc.,

And now, at this day, to wit, the third day of June, before said Supreme Court at Trenton comes the said plaintiff by his attorneys aforesaid, and the Justice before whom, etc., having
 30 first sent hither his record had before him in these words, to wit:

Afterwards, to wit, on the nineteenth day of May, nineteen hundred and thirteen, at a Circuit Court held at Paterson, in and for the County of Passaic by his Honor, Charles C. Black, one of the Circuit Judges of this State, to whom said cause was referred for trial by a Justice of the Supreme Court in the said county presiding, according to the form of the statute in such case made and provided, comes as well the within plaintiff as the
 40

JUDGMENT

within defendant by their respective attorneys within mentioned, and the jurors of the jury being summoned, also come to speak the truth of the matters within contained being chosen, tried and sworn upon their oath say that the defendant is guilty in the manner and form as the plaintiff hath within complained against it and they assess the damages of the said plaintiff on the occasion thereof over and above his costs and charges by him about his suit in this behalf expended to the sum of Two Hundred and Fifty ollars (\$250.00). 10

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages by the jury in form aforesaid found to Two Hundred and Fifty Dollars and also Sixty-seven ollars and Six Cents for his costs and charges aforesaid, by the Court now here adjudged to the said plaintiff and with his assent, which said damages, costs and charges in the whole amount to Three Hundred and Seventeen Dollars and Six Cents. 20

Judgment signed this third day of June, A. D., nineteen hundred and thirteen.

WILLIAM S. GUMMERE, C. J.

JAMES F. CARROLL—Direct

New Jersey Supreme Court.

PASSAIC COUNTY.

10

 FREDERICK A. MALLERY,
Plaintiff,
vs.
 ERIE RAILROAD COMPANY,
Defendant.

 } *Before Hon.*
 } *Charles C.*
 } *Black, J., and*
 } *a Jury.*

Paterson, N. J., May 19, 1913.

10 A. M.

20

APPEARANCES:

Messrs. LEFFERTS & LEFFERTS, for Plaintiff,

Messrs. COLLINS & CORBIN, represented by
G. S. HOBART, Esq., for Defendant.

(A Jury being empanelled and found satisfactory they were sworn.)

(Mr. Lefferts opens for the Plaintiff.)

30

(Mr. Hobart opens for the Defendant.)

JAMES F. CARROLL, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Lefferts:

Q. You are Recorder in the City of Paterson?

A. Yes, sir.

40

THE COURT: I do not suppose there is any question on many of these facts? I

JAMES F. CARROLL—Cross

suppose he was arrested, and discharged?

MR. HOBART: No, not at all.

THE COURT: As I understand it, then, the arrest is admitted, as set forth in the declaration? 10

MR. HOBART: I don't say that.

MR. LEFFERTS: The complaint was entered in the docket, before the Recorder; the record was public, the public record. He was discharged. He was arraigned before Judge Carroll, Recorder of the City of Paterson, and he was detained there for some time, first, before the Judge—— 20

THE COURT: How long?

THE WITNESS: That I could not say. He was brought in while I was on the bench—about half an hour, and the hearing was set down for the same day about two hours afterwards, and the defendant appeared by counsel and the complaint against him was dismissed, on October 26, 1911. 30

Cross-examination by Mr. Hobart:

Q. Do you remember what hour in the day he was brought before your Court? A. No, it would be in the morning.

Q. Between 9 and 10? A. After 10.

Q. And what officer brought him in? A. Officer Bott.

Q. One of the police officers of the City of Paterson? A. Yes. 40

JAMES F. CARROLL—Cross

Q. And do you recall how long he was in your office before he was allowed to go. A. Offhand, I would say about half an hour.

Q. Did you parole him, or have him put up bail, or what? A. I believe I paroled him.

Q. In his own custody? A. Yes.

10 Q. And then you set the hearing for later trial the 26th of October? A. Yes, I don't know the date.

MR. HOBART: We will stipulate the date, the 26th of October.

Q. And between the time he was brought before you and the 26th of October, you did not see him? A. No, I did not know him.

20 Q. And on the 26th of October, do you recall how long he was in your Court? A. No, I would say probably an hour or so. A number of cases were on; I don't remember whether that was the last one or not.

Q. He came in the morning, I presume? A. No, in the afternoon.

Q. About 2 o'clock? A. Yes.

Q. Did you set any particular hour, or did it just happen? A. No, the trial was at 2 o'clock.

30 Q. That was the usual hour? A. That was the usual hour.

Q. And he was there about an hour, altogether? A. Yes.

Q. Do you remember who was his counsel? A. The younger Mr. Lefferts, I believe.

MR. HOBART: That is all.

FREDERICK A. MALLERY—Direct

FREDERICK A. MALLERY, sworn as a witness in his own behalf, testifies as follows:

Direct examination by Mr. Lefferts:

Q. Mr. Mallery, I believe you are a little hard of hearing? A. Yes, sir.

Q. You are the plaintiff in this case? A. Yes, 10
sir.

Q. And where do you reside? A. Passaic.

Q. How long have you resided there? A. About nineteen years.

Q. And what is your business? A. News editor of the New York Evening Journal.

Q. And where are you now occupied? A. At William and Duane Streets, New York.

Q. How long have you been engaged there?
A. About sixteen or seventeen years. 20

Q. Prior to that, what was your business? A. Make-up editor of the New York Commercial Advertiser, now The Globe, for about six or seven years.

Q. I will direct your attention to October 18th, 1911; where were you then? A. In New York, in the morning.

Q. And what time did you leave New York for home? A. About quarter to nine—half past 8 or quarter to 9. 30

Q. On what train? A. I came over the Chambers Street ferry and took the first train out. I afterwards learned, from the conductor, that it was No. 175.

Q. Did you have a ticket? A. I had my commutation ticket from New York to Passaic.

Q. Have you that ticket with you? A. Why, I think so, yes.

(A ticket dated October, 1911, on the Erie

FREDERICK A. MALLERY—Direct

Railroad was received in evidence and marked Plaintiff's Exhibit No. 1.)

Q. How long had you been a commuter on that railroad? A. Nineteen or twenty years. I don't remember just how long; about that.

10 Q. Did you arrive at Passaic on the train? A. Yes, sir.

Q. Now, tell us what happened after your arrival. A. I was asleep, when we came to Passaic, and just after we pulled out of the station, the collector came around and woke me up, and I handed him my commutation ticket. He said, "We have gone past Passaic"; we were just going by Harrison street. And I said, "Well, stop the train and let me off." He said, "I can't, this is an express." I said, "I don't want to go to Paterson; let me off at Clifton." And he wanted me to pay my fare, and I said, "No, I don't want to go to Paterson." And he referred the matter to the conductor, and the conductor came back and said, "They tell me you won't pay your fare?" I said, "That is right." He said, "Pay or you will be arrested when you get to Paterson." I said, "I want you to give me a return check"—they have done that before for me when I have gone past, but he refused to do it, and when we got to Paterson they called an officer and I was arrested and arraigned before Recorder Carroll. The collector, Hardy, was the prosecuting witness there, and he testified—

20
30

MR. HOBART: Objected to, as to what he testified.

Q. How long were you detained after the arrest in Paterson? A. Why, I was taken directly before the Recorder. We walked up from the

FREDERICK A. MALLERY—Direct

station into the Recorder's Court and I was arraigned without any unusual delay.

Q. Where did you go after you left the Recorder's Court? A. I went directly to Passaic, to your office.

Q. And, afterwards, did you appear before the Recorder? A. Yes. The trial was continued, the hearing was on October 26th. 10

Q. The following Thursday, that would be the 26th? A. Yes.

Q. What happened then? A. The Erie presented its side of the case, and I was not asked to testify at all. The Recorder dismissed the charge.

MR. HOBART: There is no dispute about that.

21

By MR. LEFFERTS:

Q. What expense, if any, did you incur by reason of this arrest? A. My bill for counsel, the stenographer, and various other things, was \$65.00.

Q. Was that paid? A. Yes.

Q. And do you know about any publicity this arrest caused?

MR. HOBART: Objected to. 30

THE COURT: No, no, Mr. Lefferts. That is a conclusion.

MR. HOBART: That is one ground.

By MR. LEFFERTS:

Q. You are married, Mr. Mallery? A. Yes, sir.

Q. Is your wife living? A. Yes, sir.

Q. And any children? A. Two daughters.

Q. Where do they live? A. One, my married 40

FREDERICK A. MALLERY—Cross

daughter, lives in Rutherford; the other lives in Passaic.

Q. Did this arrest come to their notice, or the notice of your friends?

THE COURT: Ask him if he knows.

10

Q. Do you know? A. I certainly do.

Q. In what way did it come first? A. Why, I told them, when I got home. After that, over the 'phone and through the newspapers.

MR. HOBART: I object to the newspapers.

THE COURT: If he testifies to the fact, you have got to produce the newspapers.

By MR. LEFFERTS:

20

Q. Are you connected with any social organization? A. Yes, sir.

Q. What? A. The Passaic City Club.

Q. Any other? A. Not now.

30

Q. In what newspapers did you say this matter was published? A. It was first published in the Paterson Press, and afterwards published in the New York World, The Passaic News, The Passaic Herald, The New York Herald, one St. Louis paper, and one paper in Pennsylvania. That is all that I know of.

Q. What inconvenience, if any, have you suffered by reason of your arrest? A. I was deprived of a whole day of my vacation, and annoyed and humiliated beyond measure. I was obliged to walk through the streets of Paterson here in the custody of a police officer in uniform.

Cross-examination by Mr. Hobart:

40

Q. Do you think it is a humiliation and dis-

FREDERICK A. MALLERY—Cross

grace to walk through the streets of Paterson with a police officer in uniform? A. I certainly do.

Q. You were not handcuffed? A. No.

Q. Just walked along as any one of us might with an officer whom he knew? A. Yes, sir.

Q. Did he not have his hand on you? A. Not walking through the streets, no.

10

Q. When you got to the Recorder's Court how long did you stay there, altogether, before the Court adjourned the hearing? A. Not very long before the hearing began. I should say five or ten minutes, something like that.

Q. I mean the first day? A. That is what I am speaking of, the time of the arrest.

Q. How long were you there altogether? A. The hearing, and having my pedigree taken, anywhere from half to three-quarters of an hour.

27

Q. And afterwards, you went home? A. No, to Mr. Lefferts' office.

Q. Hired a lawyer right away? A. Yes, I certainly did.

Q. You of course were very indignant and angry? A. Well, I would like to have been alone with that conductor in a room.

Q. You wanted to hit the conductor? A. No, don't misunderstand me; there was no talk of hitting. I was certainly angry.

30

Q. Were you angry when he told you that you would have to pay fare? A. Not in particular.

Q. When did you get angry? A. Walking me through the streets.

Q. Up to that time you did not get angry? A. No.

Q. But you had refused to pay fare? A. Absolutely.

Q. And you told the Conductor and Collector that you would not pay fare. A. Absolutely. ffl

40

FREDERICK A. MALLERY—Cross

Q. You said you were asleep when the train got to Passaic? A. Yes, sir.

Q. How long had you been asleep? A. Practically from the time I left Jersey City.

Q. Is it your custom to go to sleep on that train in the morning? A. Five times out of six I go to sleep on the way to Passaic.

Q. Do you generally go to sleep on this train? A. Always, without exception.

Q. On the occasion when you were arrested, did you say anything to the conductor or anyone else about waking you up at Passaic? A. No, sir; not at that time.

Q. You expected to wake up yourself? A. Yes, sir.

Q. You knew that was an express train? A. I did not know it, then.

Q. You had been on it before? A. I don't know that I had. I knew it was the main line, and that was enough for me.

Q. You spoke of a police officer. Do you recognize him? A. Yes, sir; that is the officer, Bott, the one who arrested me.

Q. What were the items of that bill you paid, of \$65.00? A. That was for the counsel appearing at the Court here, and for the stenographer, and I don't remember the other items.

Q. How long did that adjourned hearing take? A. Oh, three-quarters of an hour to an hour.

Q. And you paid Mr. Lefferts \$65.00 for three-quarters of an hour's work? A. He had a stenographer there, too.

Q. I don't object to high fees, but I think that is a little steep. A. Well, he won the case.

Q. You spoke about your vacation, on the day of the arrest; were you on vacation then? A. Yes, sir.

40

FREDERICK A. MALLERY—Cross

Q. And on the day when the hearing was had before Judge Carroll? A. No, sir.

Q. You did not lose any of your salary or wages? A. No, sir.

THE COURT: He did not say he had.

Q. All you lost was one day's vacation? A. Yes.

Q. Which time do you refer to? A. The first 10
time.

Q. You mean you were a day late in starting on your vacation? A. Not at all. It cut one day from my vacation. I was taking a week's vacation at that time, that week; special matters that I had to attend to.

Q. Where had you been the night before? A. At a card party.

Q. Where? A. At a club room of some of the Journal boys. 20

Q. Poker game?

MR. LEFFERTS: Objected to. I think the object of that is to create prejudice.

THE COURT: I cannot rule it out on that ground.

MR. LEFFERTS: I object on the ground that it is immaterial.

THE COURT: It is part of the circumstances. I cannot see that it hampers you any, and I cannot rule it out, because it was part of the ground of the circumstances. He says he was asleep. That is an answer in itself. I cannot rule it out. 30

A. Yes, indeed.

Q. And what time did that poker game break up? A. Well, about half past six—something like that. 40

MOTION FOR NON-SUIT

Q. In the morning? A. In the morning.

Q. What time did it start? A. The evening before; I should say somewhere between eight and nine.

Q. So you were playing poker all night long?
A. Practically.

10 Q. Did you have any drinks? A. A few.

Q. How many? A. I always drink Irish whiskey.

Q. A good stiff glassful? A. No, no, no; just a moderate gentleman's drink.

PLAINTIFF RESTS.

20 MR. HOBART: I ask for a non-suit. First, it does not appear that this defendant caused the arrest, the gentleman who did it being a police officer, one of the members of the force.

THE COURT: Mr. Mallery said this man in charge of the train——

MR. HOBART: Made the complaint.

THE COURT: And then you admitted the arrest.

30 MR. HOBART: We admit the fact of the arrest, but it was under the direction and charge of the police officers.

THE COURT: We will have Mr. Mallery called back again if there is any dispute about that. He said it was at the instance of this other man, Hardy. If there is any misconception about it, we will call Mr. Mallery back.

MR. HOBART: That is the fact.

40 THE COURT: Well, that connects you with it.

MOTION FOR NON-SUIT

MR. HOBART: I don't think the mere fact of making the complaint should.

THE COURT: Hardy was the train man?

MR. HOBARTS I will admit that. I don't feel that I ought to deny it. It is true.

THE COURT: Now, second—

10

MR. HOBART: It appears on the undisputed fact that the defendant, or its agents, had probable cause to suspect that the plaintiff had violated the sections of the Act. Now, while it is true the complaint was not offered in evidence, nevertheless it is alleged in the declaration, and set up in the answer, so there can be no doubt about it. The proceeding was brought under Section 59 of the General Railroad Act. So it simply gets down to that question which I suggested in my opening, as to the probable cause which the defendant had for suspecting him of having violated this Section.

20

THE COURT: Now, that is number two. Any other point?

MR. HOBART: That is all. Your Honor is no doubt familiar, in suits of this kind, when the facts are undisputed, the question of probable cause is a matter for the Court. In a similar case, a non-suit was given, and in another—Bell vs. Atlantic City Railroad—the rule was laid down. Now, starting out with that law as a premise, it is a matter for the Court to pass upon as to whether or not there was probable

30

40

MOTION FOR NON-SUIT

cause to believe that the plaintiff was guilty of, not the crime, but of the somewhat anomalous matter alleged under Section 59 of the Railroad Act. How can there be any doubt about that under the undisputed facts?

10

He admits he did not pay his fare beyond Passaic, and he was told that he would be guilty of a violation of the statutes. He admits he rode beyond Passaic, and that he did not pay his fare; that he was asked to pay his fare and refused to pay his fare. It is absolutely a perfectly plain case, and it is not a matter for Your Honor or the Jury, certainly not for Your Honor, to say that the question to pass upon was whether or not he was guilty of violating the Act. That the Recorder passed upon, and I can easily see how the Recorder might properly hold that the man was asleep, and not intentionally and wilfully attempting to defraud; but certainly there is enough here to show that he knew what he was doing, because he said he woke up. Now, all our man says was that he was asleep, and all they know of was that he woke up after getting beyond Passaic and wanted to get off, and they couldn't change their schedule to accommodate one passenger. It seems to me under the rule we are entitled to a non-suit on that ground.

20

30

40

THE COURT: On the first ground there is evidence in the case which shows that this arrest was made by the authority of those in charge of the train, the

FRANK L. BOTT—Direct

officers of this defendant company. Motion denied on that ground.

On the second ground, on the authority of *Baditz vs. the West Shore Railroad*, 67 Atl. 1067, the motion must be denied, because in that case it is held that the plaintiff was entitled to have affirmed whether he was attempting to ride and defraud the company out of fare, and also *Spencer, third Vroom*, 100. The motion is denied, it being a jury question. 10

MR. HOBART: I note an objection to that ruling.

THE COURT: That is, as to whether there was probable cause. 20

MR. HOBART: Yes, as the evidence now stands.

FRANK L. BOTT, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Hobart:

Q. You are a police officer of the City of Paterson? A. Yes, sir. 30

Q. You have been on the force some years? A. Seventen.

Q. Do you recall the occasion of the arrest of Mr. Mallery at the Erie Railroad station, Market Street, Paterson, October 18, 1911? A. Yes, sir.

Q. You were on duty at that time? A. I was.

Q. Do you recall at what hour the arrest was made? A. About two minutes past ten.

Q. Did you make the arrest? A. I did. 40

FRANK L. BOTT—Direct

Q. Where did you take him? A. To police headquarters and to the desk, which we do first, and then immediately to the court.

Q. Before you arrested Mr. Mallery, did you hear him say anything about paying his fare, or not paying his fare? A. Yes, he said he didn't
10 think it was right that he should pay any fare.

THE COURT: He said distinctly he would not pay any fare, he said that?

THE WITNESS: He said that distinctly over two or three times.

BY MR. HOBART:

Q. Do you recall how you went to the police court, that is, whether you walked or not? A.
20 We walked.

Q. How long did it take you to go? A. About ten minutes.

Q. And how long was Mr. Mallery at the police court? A. Why, I don't think more than five minutes; but still, we were in there fifteen minutes, but he was allowed about ten minutes to use the telephone, telephoning some friends. I don't think altogether it was more than fifteen
30 minutes.

Q. Do you recall his being paroled? A. He was.

Q. Did you observe anything about the condition of Mr. Mallery at this time, with reference to sobriety?

MR. LEFFERTS: Objected to. You don't attempt to justify the arrest by disorderly conduct?

THE COURT: No; but they have a right to
40 show all the circumstances.

FRANK L. BOTT—Direct

THE WITNESS: It is not an offense of course, whether he was slightly intoxicated.

THE COURT: Well, now, what do you mean by "slightly intoxicated"?

THE WITNESS: Well, I mean he was partially intoxicated. 10

THE COURT: That does not explain; you are getting into a realm where you have got to be exact if it is to be of any value. What does it mean, one drink?

THE WITNESS: I couldn't tell how many drinks; but that is the way we have of speaking of it. 20

THE COURT: What evidence? What does a man partially intoxicated do? I am not trying to baffle you.

THE WITNESS: I understand.

THE COURT: But what did he do?

THE WITNESS: You could tell by the way he acted. He staggered just a little bit. 30

THE COURT: Did he seem rational?

THE WITNESS: He seemed to know what he was talking about.

THE COURT: And sensible?

THE WITNESS: Sensible enough, too.

THE COURT: And could walk?

THE WITNESS: He could walk.

THE COURT: You mean, then, that you 40

FRANK L. BOTT—Cross

think he had been drinking some liquor, and he showed it.

THE WITNESS: He showed the signs of it.

THE COURT: And that is what you mean by partially intoxicated?

10

THE WITNES: Yes, sir.

BY MR. HOBART:

Q. Did Mr. Mallery say anything himself about drinking? He said, "I want you to understand that I have been drinking, and I am somewhat intoxicated, but not so much but I know what I have been doing."

20

THE COURT: He said he had been drinking some Irish whiskey.

THE WITNESS: Yes, sir.

BY MR. HOBART:

Q. Were you there on the adjourned day of the hearing? A. I was.

Q. And how long was Mr. Mallery in court on that day? A. I should think he was there about fifteen minutes, before the case was called, and the case took about half an hour, or three-quarters of an hour.

30

Cross-examination by Mr. Lefferts:

Q. You are satisfied that Mr. Mallery knew what he was doing in court? A. Yes, sir.

Q. And he appeared to be a little bit sleepy and drowsy. A. Yes, sir.

Q. And that led you to the conclusion that he was partly intoxicated? A. Yes, sir; I knew he

40

was.

FRANK L. BOTT—Re-direct TIMOTHY BURNS—Direct

Re-direct examination by Mr. Hobart:

Q. You have had occasion to take care of intoxicated men? A. Oh, very many.

TIMOTHY BURNS, sworn as a witness on behalf of the defendant, testified as follows: 10

Direct examination by Mr. Hobart:

Q. You are employed as a conductor by the Erie Railroad. A. Yes, sir.

Q. Were you running train number 175, when Mr. Mallery got in some trouble. A. Yes, sir.

Q. Do you recall the circumstances? A. Yes, sir.

Q. Do you recall the date? A. I am not sure. I have really forgotten. 20

Q. You were the conductor, I believe, of the train? A. Yes, sir.

Q. What was the first time your attention was called to any difficulty? A. Somewhere between Clifton and Paterson; I could not just state where.

Q. Who called your attention to it? A. The ticket collector, Mr. Hardy.

Q. What did he say? A. He refused to pay his fare from Passaic to Paterson, and shoved me away. 30

Q. What explanation did you make? A. That he would have to pay his fare; that that was the rule, and the law of the State he was riding in; and he shoved me away, and I think he swore.

Q. Did he say anything about stopping the train for him? A. No, sir, he just shoved me away.

Q. Did you get off at Market Street, Paterson? A. Yes, sir. 40

TIMOTHY BURNS—Cross

Q. You did not go with him to Court? A. No, sir.

Q. What can you tell us about his conversation with reference to sobriety? A. Well, he had been drinking.

10 Q. Can you give us an idea to what extent? A. Quite some, I thought.

Q. What evidence was there about him to indicate that? A. I would consider him pretty well under the influence of intoxicating liquor.

20 Q. But what was there in his actions or words to indicate that? A. He was very rough to me in the train, and when he left the train at Paterson I put my hand on his shoulder and said "You will have to pay your fare," and he shoved me away as if he would strike me, and he went over near the Telegraph Office, and I stopped him and put him in charge of Mr. Botts.

Q. And did you recall any of the language he used? A. Some profane language.

Q. Do you remember what it was? A. I think he called me a son of a b—— and shoved me away, and then Mr. Bott came and took charge of him.

Cross-examination by Mr. Lefferts:

30 Q. You say that Mr. Mallery did not ask you to stop the train and let him off. A. No, sir; not me.

Q. Didn't you notice that he was asleep? A. No, sir. He was dazed, there, when I came to him and he had some words with the ticket collector and he was ugly.

Q. And you were a little bit ugly, too? A. No, sir; I simply explained the conditions to him.

40 Q. You were perfectly calm, not a bit mad? A. No, sir. I was not mad, there was no reason to be. I simply wanted his fare.

TIMOTHY BURNS—Re-direct

Q. Now, isn't it customary, sometimes, to give transfer checks? A. No, sir. I never gave one.

Q. Had you ever seen Mr. Mallery before? A. Not before that day.

Q. Didn't you know he was a regular commuter between New York and Passaic? A. No, sir. 10

Q. Why did you think he was trying to beat the railroad company out of a fare? A. Because several others had tried to do it.

Q. Oh, just because several others had tried to do it, you suspected him, you had no reason to suspect Mr. Mallery. A. No more than anybody else.

Q. Because several others tried it, you suspected Mr. Mallery? A. I didn't know he was any different from any other man. They do it every day. 20

Q. That was the only reason? A. The law of the State, and the rules of the Company require him to pay his fare.

Re-direct examination by Mr. Hobart:

Q. Do you remember if you had seen Mr. Mallery on the train before the collector called your attention to the matter? A. No, sir. I was not in that part of the train.

Q. You did not have charge of it? A. No, sir. 30

THE COURT: Mr. Burns, was there anything about Mr. Mallery that you saw then, or that you knew, that led you to believe that he, in this particular instance, was trying to avoid the payment of fare? A. Yes, sir; because he was under the influence of liquor, and ugly, and when he got to Pater-son, instead of walking up the street, 40

TIMOTHY BURNS—Re-direct

he was going around behind the depot.

THE COURT: Now, wouldn't a man under the influence of liquor excite in you a suspicion that he had honestly neglected to get off at Passaic? A. Yes, sir.

10 THE COURT: And that he was not intending to ride beyond Passaic? A. Well, I thought that he had, from the way he appeared. I thought his destination was Paterson, at the time he refused fare, the same as several others.

THE COURT: You say you inferred that because he showed some evidence of intoxication? A. Yes, sir.

20 THE COURT: Now, why would not the evidence of intoxication cause you to think that he naturally intended to go to Paterson (I mean Passaic), and did not get off? A. I have to have a check on these people.

BY MR. HOBART:

Q. Were there many people on the train? A. Not more than ordinary travel, there was plenty of room.

30 Q. How many cars were there in the train? A. Five.

Q. Could you give us an idea of how many people were on the train? A. Leaving Jersey City, maybe 235 or 240.

Q. Have you had other instances where people tried to beat their way beyond stations? A. Every day, sir.

40 MR. LEFFERTS: That is objected to.

TIMOTHY BURNS—Re-cross and Re-direct

THE COURT: He said that on direct examination.

BY THE COURT:

Q. Was there anything special about Mr. Mallery, as distinct from the fact that he did not pay his fare, that led you to believe that he was trying to get a free ride from Passaic to Paterson? A. Yes, sir. 10

Q. What was the fare? A. 12 cents, with the rebate of 22 cents.

Q. Did you tell Mr. Mallery? A. I tried to, but he would not pay attention.

Recross-examination by Mr. Lefferts:

Q. Did you tell him you would arrest him if he did not pay it, yes or not? A. I told him he would have to pay his fare. 20

Q. You did not tell him that if he did not pay his fare you would arrest him? A. When we arrived at Paterson I put him in the hands of an officer, to get the fare which was due me.

Re-direct examination by Mr. Hobart:

Q. How far was Mr. Mallery from the train when he was arrested? A. He was about ten or twelve feet, just clear of the eastbound train, at the corner of the depot, maybe a little further. 30

Q. Then he had left the train? A. Yes.

Q. And was going in which direction? A. Through the yard in an easterly direction. He threw me away, and I stopped him until the officer came.

FRED T. PARET—Direct

FRED T. PARET, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Hobart:

Q. You are employed as brakeman by the Erie Railroad Company? A. Yes, sir.

10 Q. Do you recall the occasion when Mr. Mallery was arrested, in October, 1911? A. I recall the day, yes, sir.

Q. Were you a brakeman on that train, No. 175? A. Yes, sir.

Q. What was the first that you knew that there was any trouble on the train? A. Well, I noticed that the conductor and this man, Mallery, was having some little argument.

20 Q. You did not hear what was said? A. I did not stop to listen.

Q. Where was the train, at that time? A. I should judge, about Lakeview.

Q. Where was your next stop, after leaving Passaic? A. Paterson.

Q. What was the next thing you noticed after you observed some argument that you did not hear? A. The next thing was Mr. Mallery, at Paterson, seemed to be trying to get away, and Mr. Burns stopped him.

30 Q. Where were you at that time? A. Between two coaches.

Q. Which coach was Mr. Mallery riding in? A. I think it was the rear coach.

Q. Was that under your direction as brakeman? A. Yes, sir.

Q. Was it any part of your duty to call out stations? A. Yes, sir.

40 Q. Do you recall that you called out the station at Passaic? A. Yes, sir, I called it out twice.

FRED T. PARET—Cross

Q. Did you call it out in the coach where Mr. Mallery was? A. Yes.

Q. Did you call out louder than you are talking now? A. Yes, I called out loud.

Q. How loud—can you say whether or not passengers in the coach could hear you? A. Well, I called out in the car loud enough for any passenger in the train to hear me, if he is listening, or awake. 10

Q. You were also on duty before the train left Jersey City? A. Yes, sir.

Q. Do you recall any announcement made before the train left Jersey City as to where the train would stop?

MR. LEFFERTS: Objected to.

THE COURT: There is no dispute that Mr. Mallery knew the train was for Passaic. 20

BY MR. HOBART:

Q. Did you make any announcement as to where that train would stop, before you left Jersey City?

A. I go through every car, announcing all the stations along the line—"Stopping at Passaic, Paterson, etc., etc."

Q. Did you make any announcement on the morning of this incident? A. Yes, sir. 30

Q. Had you observed anything of Mr. Mallery on the train before you saw Mr. Burns and Mr. Mallery on the station platform at Paterson? A. Nothing, except them talking.

Q. And on the train at that time, after it had gone past Paterson, did you observe them talking?

A. Yes.

Cross-examination by Mr. Lefferts:

Q. I understand you did not hear what was 40

FRED T. PARET—Re direct and Re-cross

GEORGE J. RYERSON—Direct

said between Mr. Mallery and the Conductor?

A. I did not want to hear.

Q. You make your announcements when the train is in motion? A. As a rule.

10 *Re-direct examination by Mr. Hobart:*

Q. When you made the announcement at Jersey City, was the train standing, or moving? A. The train was standing. I always do that before it leaves.

Recross-examination by Mr. Lefferts:

Q. Did you make that announcement in each car, or on the platform, at Jersey City? A. In
20 the car.

Q. Did you go through the whole train? A. Yes, sir; three minutes before the train leaves.

Q. How long did it take you to go through and make such an announcement? A. I give myself three minutes and I generally get through before the train leaves.

GEORGE J. RYERSON, sworn as a witness on behalf of the defendant, testifies as follows:

30

Direct examination by Mr. Hobart:

Q. Mr. Ryerson, where do you live? A. Middletown, New York.

Q. What is your business? A. Moving Picture Aerodrome.

Q. Were you at the railroad station in Paterson on the occasion when Mr. Mallery was arrested? A. Yes, sir; he was sitting near my seat.

40 Q. Where were you going? A. To Goshen, New York, and from there to Florida.

GEORGE J. RYERSON—Cross

Q. You would take a west-bound train? A. I go up that way; I don't know the direction.

Q. And do you remember the Conductor of the train? A. Mr. Burns.

Q. You know him? A. I do.

Q. The gentleman who testified here this morning? A. Yes, sir. 10

Q. While you were waiting at the station, and after the train had arrived, did you see any disturbance in which Mr. Burns and Mr. Mallery were concerned. A. I was not on the train before it arrived, but after it arrived I did.

Q. What did you see and hear? A. As I was getting on the train that I believe leaves Paterson at 10:03 o'clock, the conductor and this man Mallery had some argument about the fare, the price of a ticket. The conductor said, "You will have to pay your fare," and they had an argument concerning that, and Mr. Burns had his hand on his shoulder, and he kind of turned back, this way, and you could take it he was either going to strike the man, or not. 20

Q. Did he swear? A. Yes, he swore.

Q. Who? A. Mallery.

Q. And what did he say? A. It sounded to me like son of a b——.

Q. You said son of a bitch? A. Yes, sir, that is what it sounded like. 30

Q. How close were you to them? A. About five or six feet.

Q. And you afterwards took the train? A. Yes, sir, and went on about my business.

Cross-examination by Mr. Lefferts:

Q. You have testified in this case before, haven't you? A. Yes, sir.

Q. At the office of Collins & Collins? A. I don't know, at Jersey City. 40

GEORGE J. RYERSON—Cross

Q. You were cross-examined by me on that occasion? A. Yes, sir.

Q. And you said that you did not know Mr. Mallery? A. I did not know him, and I don't know the man today, except by his name.

Q. And you said you did not recollect the date?

10 A. I don't know.

Q. You said you couldn't fix the time? A. At 10:03, I told you, right in Jersey City, that is what I said.

Q. How did you come to be interested in the case? A. I was asked to give my name as a witness, on the train. I was asked would I sign here, if anything came of the case.

Q. Who asked you, Mr. Burns? A. Mr. Burns, the conductor, I believe it is.

20 Q. Were you on the platform of the train, or on the platform of the depot, when you heard the conversation? A. On the platform of the depot, waiting to get on the train.

Q. And you say that you were about ten or twelve feet away? A. I don't say that, about as near as this gentleman here. (indicating the stenographer, about six feet from witness.)

30 Q. Can you recall what was said? A. Same as I said a minute ago: The conductor had his hand on the man's shoulder and asked for his ticket, and he pulled away and refused to answer, and swore at him, and called him a son of a bitch—it sounded to me like.

Q. Were they talking very loud? A. He was hollering and yelling.

Q. Was the conductor angry? A. He was angry, but he did not swear nothing at all.

Q. Was there any exchange of harsh words between them? A. No.

40 Q. Didn't you say so? A. No, I didn't say so: there was no harsh words between them.

MRS. BERTHA RYERSON—Direct and Cross

MRS. BERTHA RYERSON, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Mrs. Ryerson, you live in Middletown, I believe. A. Yes.

Q. You are the wife of the last witness? A. Yes. 10

Q. Were you with him on the occasion of this disturbance. A. Yes, sir.

Q. You were going with him on that train? A. Yes, sir.

Q. Will you state what you saw and heard about the affair? A. I seen the conductor and the other gentleman geting off the train, and I heard the conductor ask him for the money for his fare, which he refused to pay. 20

Q. Where were you when that was said? A. On the platform, waiting for the train.

Q. You intended to go on that same train? A. Yes, sir.

Q. Did you hear any swearing? A. Yes, sir, he cursed and swore at the conductor.

Q. Who did? A. This Mr. Mallery.

Q. Was there any attempt on the part of either one to strike the other? A. I thought that Mr. Mallery was going to strike the conductor. 30

Q. Did he, in fact, strike him, as far as you know. A. No, he did not.

Cross-examination by Mr. Lefferts:

Q. You testified in this case before? A. Yes, sir.

Q. And you said you never saw Mr. Mallery before. A. I never did.

Q. And did you say he had a black moustache? A. Now, listen— 40

MRS. BERTHA RYERSON—Re-direct

Q. And did you say he had a black moustache?

A. I said yes, because you, at the time, were trying to get me all mixed up; and, now, I took your insults down at Jersey City, and I am not going to take them here. You asked me as much as if I was looking for a man, and if I was I would not
10 be looking for nic-nacks.

Q. And I asked you if he had a black moustache? A. And I said I was not sure—

Q. And your answer was "I know, because he was turned toward me sidewise, and he almost ran into me." Do you expect to be paid for testifying in this case? A. I expect my expenses from Middletown to Jersey City and down here today, and I had to leave somebody to look after my home, and that is all I expect for my expenses.

20 Q. You are the wife of Mr. Ryerson, the last witness? A. Yes, sir.

Q. He expects to be paid? A. I expect he does.

Q. For all the work he is doing? A. There is no work about it, only our expenses coming down here.

Q. You were perfectly willing to go to Jersey City to testify? A. I certainly was.

Q. And you were not subpoenaed in this case? A. He was subpoenaed in Paterson, and the case did not come up and was postponed.
30

Q. And you went freely to Jersey City? A. Yes, sir.

Q. And you came freely here? A. I had some business here.

Q. Who told you what to testify to? A. Nobody told me, I only told what I seen and heard.

Re-direct examination by Mr. Hobart:

40 Q. At the time of the occurrence, you were living in Paterson? A. Yes, sir.

TIMOTHY BURNS, recalled—Direct

FREDERICK A. MALLERY, recalled—Direct

TIMOTHY BURNS, recalled as a witness for the defendant, previously sworn, testifies as follows:

Direct examination by Mr. Hobart:

Q. Was there any other time in the month of October, 1911, or since, that you had any altercation with any passenger at the Market Street Station about paying his fare—I mean others than Mr. Mallery? A. No, sir. 10

NO CROSS EXAMINATION.

IN REBUTTAL.

FREDERICK A. MALLERY, recalled as a witness in his own behalf, in rebuttal, previously sworn, testifies as follows: 27

Direct examination by Mr. Lefferts:

Do you know who it was who made the complaint against you? A. In Court.

Q. Yes. A. Mr. Hardy.

Q. And what position did he occupy? A. He was the collector.

THE COURTS The motion to non-suit was made, and it was on the ground that an officer of this company had not made the complaint, and I said he may be an employe, and they said Hardy was in their employ. 30

BY MR. LEFFERTS:

Q. You have heard the testimony of Mr. Burns?

A. Yes, sir.

Q. And of Mr. Ryerson? A. Yes.

Q. About profane language: Did you call the 40

FREDERICK A MALLERY, recalled—Cross

Conductor any name? A. I? Not at all; absolutely no.

THE COURT: That, you say, is not true?

A. Absolutely not. It is an expression I never use.

10 *Cross-examination by Mr. Hobart:*

Q. Do you ever use the expression Damn? A. I do.

Q. And did you then? A. Once. That was in the car, and I did not say it to him. Allow me to explain. He said "You will pay your fare, or I will have you arrested." I said "Arrest and be damned." That is the only profanity I used.

Testimony closed.

20 Mr. Hobart addresses the jury on behalf of the defendant.

Mr. Lefferts addresses the Jury on behalf of the plaintiff.

30

40

CHARGE

CHARGE.

BLACK, J.

Gentlemen of the Jury: On the eighteenth of October, 1911, these parties who are now before the Court, the plaintiff and the defendant, occupied the position of what is known in law as passenger and carrier. The plaintiff was the passenger, and the defendant was the carrier company, and as such they had mutual rights and mutual obligations towards each other.

10

Now, in this suit, or the basis of this suit, grows out of an alleged violation of the statute, and, while the facts in the main are undisputed, the view that the Court takes of the case is that the conclusion which is to be drawn from those facts is not entirely clear, and that conclusion, whatever it may be, is a question of fact for you to decide.

20

Now the law of the State, the written law of the State applicable to this case is found in the pamphlet laws 1903, page 674, the compiled statutes, vol. 3, page 4246, sec. 59, and the parts of that statute which are pertinent in this case are these: It provides that, "If any person shall travel or attempt to travel on any train on any railroad without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, shall knowingly and wilfully proceed on such train beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof," it provides that it shall be an offense, and goes on to provide that, "If any person be discovered in committing or attempting to commit such offense, all officers, servants, railway police and other persons on behalf of the company, and all constables and peace

30

40

CHARGE

officers, may lawfully apprehend and detain such person until he can conveniently be taken before such justice, district court, or such recorder, police justice or police court of the municipality, or until he shall be otherwise discharged by the course of law."

10 The concrete facts are, the plaintiff had a commutation ticket from New York to Passaic, and that he boarded train No. 175, leaving Jersey City at 9:30 in the morning, and that his commutation ticket entitled him to ride to Passaic. He did not get off at the city of Passaic, and as the train was proceeding beyond Passaic to Paterson, the conductor demanded his fare, and he refused to pay it on the ground that he had intended to get off at Passaic. Then he was arrested, and he claims he
20 should have damages for that arrest, as being without probable cause and without justification.

Now, the question whether or not the plaintiff, having paid his fare on train 175 to Passaic, knowingly and wilfully proceeded on the train beyond such distance to Paterson without previously paying the additional fare from Passaic to Paterson, and with intent to avoid payment thereof, is a question of fact for you to decide from all the evidence in the case.

30 Now in an action of trespass such as this for an alleged arrest and false imprisonment, the defendant may be justified by showing probable cause for said arrest, but the facts or circumstances must be sufficiently suspicious to induce a discreet person to believe that the party was guilty of the charge complained of and which has been committed.

40 So you see, then, gentlemen, it is a question of fact for you to say whether this plaintiff knowingly and wilfully intended to ride without the

CHARGE

payment of the fare. And the other side of the question for you to say is whether this defendant company had probable cause for the arrest. If you find that there was probable—to use the expression of the Court—probable cause for the arrest, you will find for the defendant.

If, on the other hand, you find for the plaintiff, he is entitled to damages, and the amount of damages is a question for the jury. The courts have said that a passenger who has been illegally arrested for riding beyond the station for which he has paid his fare is entitled to damages for such physical injury as he may have sustained, and for injury to his feelings resulting therefrom, but not punitive damages. Therefore, gentlemen, if you find at all for the plaintiff, it is hardly necessary for me to caution twelve sensible men that you should use your good, careful, conscientious judgment. There is no evidence in the case of any pecuniary loss; comparatively little or no evidence of any social loss. He is entitled to recover, if at all, a reasonable compensation for injury to his feelings and for money loss, if any.

The burden of proof is upon the plaintiff to satisfy you by a fair preponderance of the evidence that he has made out his case under this rule of law, under the statute. If you are not so satisfied, and the evidence satisfies you there was probable cause for the arrest, then your verdict should be for the defendant. If you find for the plaintiff, then you will give him damages under this rule of law, and you will exercise your good, careful, conscientious consideration.

I have been requested to charge by the defendant, as follows:

1. The jury are directed to find a verdict in favor of the defendant.

EXCEPTIONS TO CHARGE

Refused.

2. A passenger carried beyond his destination while asleep is not entitled to a free passage to the next station.

I so charge.

10 3. The employes of defendant were not under any obligation to awaken the plaintiff upon the arrival of the train at Passaic.

I so charge.

MR. LEFFERTS: I take exception to that part of your Honor's charge where you state that there is no evidence of pecuniary loss suffered by the plaintiff.

20 THE COURT: There is some evidence of pecuniary loss, that he paid out sixty-five dollars. That is the only evidence of any pecuniary loss, so if I made the statement of no pecuniary loss it was a slip.

30 MR. HOBART: I take exception to that part of your honor's charge where it says it is left to the jury to say, as a question of fact, whether or not the defendant had probable cause to suspect the party guilty, under section 59 from which your honor quoted; also to that part of the charge where it is left to the jury to say as a question of fact whether the plaintiff refused to pay additional fare with intent to avoid payment of it, and in the same connection, the same section of the charge, where it is left to the jury to say whether or not the plaintiff knowingly and wilfully proceeded on such train beyond the distance for which he had paid; and I also except to your honor's refusal to charge defendant's
40 Request No. 1.

NEW JERSEY
COURT OF ERRORS AND APPEALS.

FREDERICK A. MALLERY,

Respondent,

vs.

ERIE RAILROAD COMPANY,

Appellant.

**ON APPEAL.
BRIEF FOR
RESPONDENT.**

FACTS.

The facts briefly stated are that the plaintiff on the twenty-eighth day of October, Nineteen Hundred and Eleven, as a passenger was traveling upon one of the defendant's trains leaving Jersey City at nine thirty o'clock in the morning. That he was a commuter between the cities of Passaic and Jersey City and had in his possession a commutation ticket; that the train upon which he was traveling did not stop after leaving Passaic until it arrived at Paterson; that after leaving Jersey City the plaintiff fell asleep and did not awake until the train was leaving Passaic depot; that he was awakened by an employe of the railroad company and a fare was demanded for transportation to the City of Paterson; that immediately the plaintiff showed the defendant's servant his commutation ticket and stated he did not wish to go beyond Passaic and requested to be let off at Clifton, a station first beyond the city limits of Passaic. This request was refused and payment of fare was insisted upon for transportation to the City of Paterson. The plaintiff refused such payment on the ground that

he intended to get off at Passaic and that he was being carried against his will to the City of Paterson. That thereupon he was threatened with arrest and when he arrived at Paterson was at the instance of the defendant company, through its employes, placed under arrest.

The defendant predicates its appeal upon three grounds:

1st—That it did not appear that the defendant caused the arrest.

2nd—That it had reasonable provocation and was justified in making the arrest.

3rd—That the trial judge erroneously charged the jury in certain particulars hereinafter following.

POINT I.

The Arrest Was Made at the Instance of the Defendant and With Its Knowledge and Consent.

The course of procedure under which the arrest of the plaintiff was procured was similar to the case of *Reuck vs. McGregor*, 32 N. J. L. P. 70.

In the amended answer of the defendant it admits that it filed a complaint against the plaintiff and caused him to be arrested pursuant to the provisions of Section 59 of the statute entitled "An act concerning railroads," (Revision of 1903.) (S. C. P. 6, 1, 1-10.)

Mr. Mallery testified that the arrest was made at the instance of the Conductor and Collector. (S. C. P. 12, 1, 10-30.)

Counsel for the defense admitted that the complaint was made at the instance of its employes. (S. C. P. 18, 1, 30-40; P. 19, 1, 1-10.)

POINT II.**The Defendant Did Not Have Probable Cause or Reasonable Provocation for the Arrest of the Plaintiff.**

The principal of law involved in the settlement of this question is determined in the cases of *Spencer vs. Aness*, 32 N. J. L. P. 100 and *Reuck vs. McGregor*, 32 N. J. L. 70.

In order to justify the arrest the facts and circumstances leading up to it must have been such as to lead the defendant to reasonably conclude that when the plaintiff arrived at the City of Passaic, his alleged destination, he knowingly remained upon the train with a wilful intention of riding to the City of Paterson without paying his fare. The fact that the plaintiff refused to pay his fare after leaving Passaic did not constitute a violation of the statute unless his traveling beyond his alleged destination was done with the intention to defraud the defendant. (*Cone vs. R. R. Co.* 40 Atl. R. 780; *Tidey vs. R. R. Co.* 49 Atl. R. 427.) We submit that there were no facts in the possession of the defendant's employes to justify them in concluding that the act of the plaintiff in not leaving the train at Passaic was the result of a wilful intention on his part to defraud the defendant. It is not disputed as testified by Mr. Mallery that he was asleep upon his arrival at Passaic; that after the train left the depot he was awakened by the Collector; that he presented his commutation ticket; that he was informed that the train had passed his destination; that he desired to have the train stopped and that such request was refused; that he stated he did not want to go to Paterson; that he wanted to be permitted to get off at the nearest station, but was carried against his will to the City of Paterson. (*S. C. P.* 12, 1. 10-30.) The fact that on his arrival at Passaic he was asleep and that he was in possession of a commutation ticket entitling him to ride between New York and Passaic and that he requested to be allowed to get off the train, shows in a way which it is difficult to controvert that he was carried

without his knowledge beyond his destination. These facts clearly show that he had no intention of defrauding the defendant or of violating the statute, but was against his will carried from Passaic to Paterson. At all events, they show no probable cause to impel the conductor or the trainmen of the company to believe he was violating the statute or trying to defraud the company, but is evidence of an intention on his part which is exactly contrariwise.

POINT III.

The Court Did Not Err in Leaving for the Jury the Consideration of the Questions as to Whether There Was Reasonable Provocation for the Arrest of the Plaintiff, and Whether or not the Plaintiff was Riding to the City of Paterson in Violation of the Statute.

Bodewitz vs. R. R. Co. Atl. R. 57, P. 10667;
Tidey vs. Erie R. R. Co. Atl. R. 49, P. 427; Af-
firmed Atl. R. 51, P. 1110. Cone vs. R. R. Co.
Atl. R. 40, P. 780.

In the cases of Bell vs. R. R. Co. 58 N. J. L. P. 227, and Stricker vs. R. R. Co. 60 N. J. L. P. 230, the undisputed facts did not show that the arrests were made without reasonable or probable cause, and in such cases it was consequently held that the question of probable cause was for the Court. The case under consideration in these particulars is essentially different. The undisputed facts clearly establish that the arrest of the plaintiff was without justification or probable cause and therefore this question was properly left for the jury.

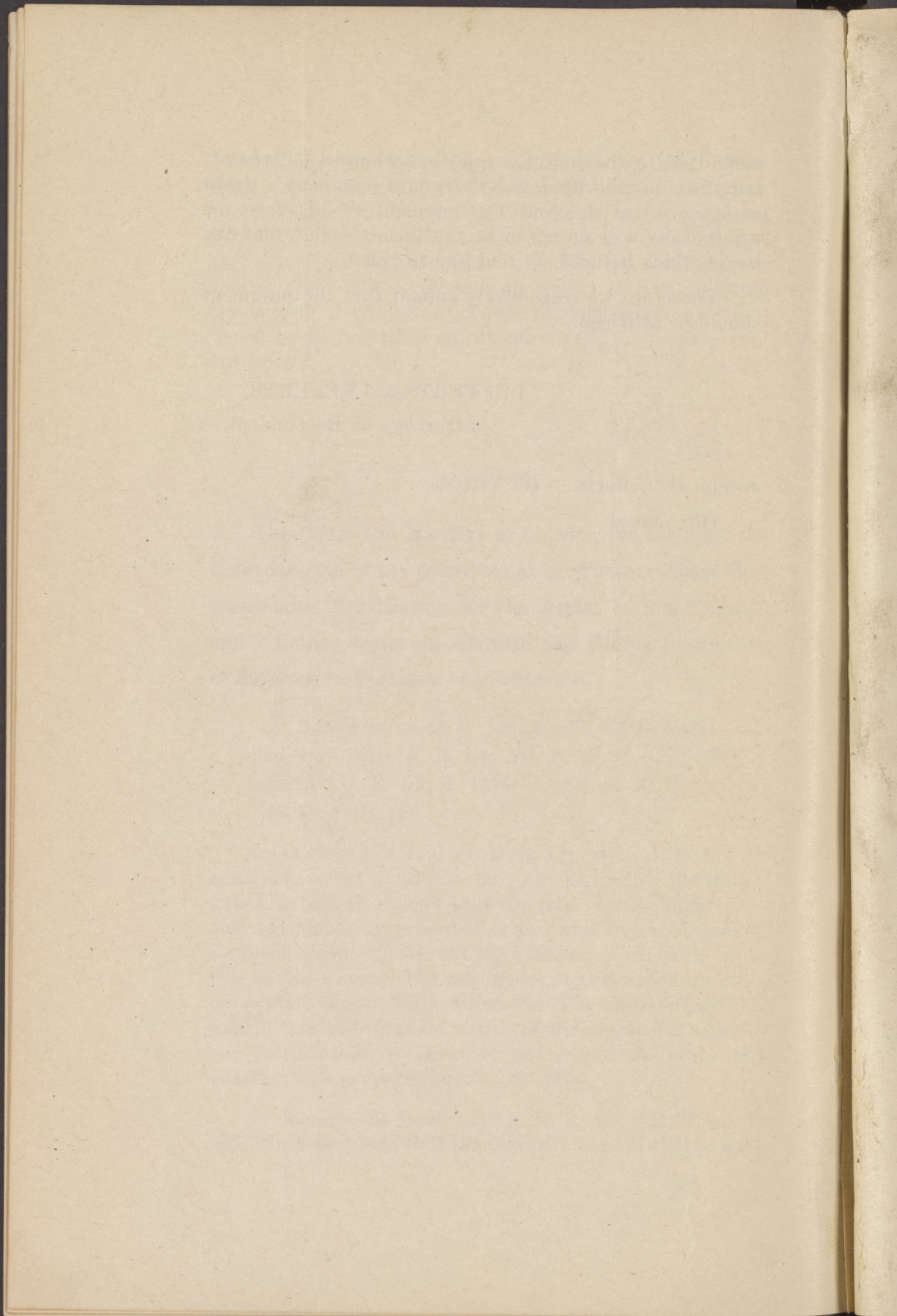
In the case of Bodewitz vs. R. R. Co. Atl. R. 57, P. 1067, the Court held that the plaintiff was entitled to have

submitted to the jury the question whether he was attempting to ride upon the defendant company's train with the intent to avoid the payment of his fare, or whether he was doing so in the honest belief that the ticket which he held entitled him to ride.

Therefore we respectfully submit that the judgment should be affirmed.

LEFFERTS & LEFFERTS,
Attorneys of Respondent.

Joseph H. Lefferts,
Of Counsel.



New Jersey Court of Errors and Appeals.

FREDERICK A. MALLERY,

Respondent,

vs.

ERIE RAILROAD COMPANY,

Appellant.

On Appeal
from Supreme
Court.

10

**BRIEF OF COLLINS & CORBIN IN
FAVOR OF APPELLANT.**

(1)

Statement of the Case.

This appeal brings up for review a judgment entered in the Supreme Court for the sum of Two Hundred and Fifty Dollars, in favor of the respondent (plaintiff below and hereafter called plaintiff) and against the appellant (defendant below and hereafter called defendant), after verdict in his favor in a trial at the Passaic Circuit. The questions involved are:

20

(a) Whether it was error on the part of the trial judge to refuse to nonsuit the plaintiff. This point is raised by motion made therefor by the defendant at the close of the plaintiff's case.

30

(b) Whether it was error on the part of the trial judge to refuse to charge the jury in favor of the defendant. This point is raised by a request submitted to that effect by the defendant at the close of the case.

(c) Whether there was error on the part of the trial judge in his charge to the jury. This point is raised by exceptions taken at the trial to certain parts of the charge.

40

(2)

Grounds of Appeal.

(a) Plaintiff should have been nonsuited because (1) it did not appear that the defendant caused the arrest; (2) the defendant or its agents had probable cause to suspect that the plaintiff had violated Section 59 of the General Railroad

10 Law.

(b) The trial judge refused to charge the jury the following request submitted by the defendant:

“The jury directed to find a verdict in favor of the defendant.”

(c) The trial judge erroneously charged the jury as follows:

20 1. “Now, the question whether or not the plaintiff, having paid his fare on train 175 to Passaic, knowingly and wilfully proceeded on the train beyond such distance to Paterson without previously paying the additional fare from Passaic to Paterson, and with intent to avoid payment thereof, is a question of fact for you to decide from all the evidence in the case.

2. “So you see, then, gentlemen, it is a question of fact for you to say whether this plaintiff knowingly and wilfully intended to ride without the payment of the fare.

30 3. “Now in an action of trespass such as this for an alleged arrest and false imprisonment, the defendant may be justified by showing probable cause for said arrest, but the facts or circumstances must be sufficiently suspicious to induce a discreet person to believe that the party was guilty of the charge complained of and which has been committed.

40 “And the other side of the question for you to say is whether this defendant company had probable cause for the arrest. If you find that there was probable—to use the expression of the Court—probable cause for the arrest, you will find for the defendant.

"The burden of proof is upon the plaintiff to satisfy you by fair preponderance of the evidence that he has made out his case under this rule of law, under the statute. If you are not so satisfied, and the evidence satisfies you there was probable cause for the arrest, then your verdict should be for the defendant."

(3)

Brief of the Argument.

10

I.

The trial judge should have nonsuited the plaintiff, or in lieu thereof, should have granted defendant's request to charge the jury in its favor.

The plaintiff's declaration alleged that on October 18th, 1911, the defendant's servants, acting within the scope of their authority, while the plaintiff was a passenger on a train, assaulted the plaintiff and imprisoned him for about four hours, and compelled him to go to court, without any reasonable or probable cause under a false charge that plaintiff had violated Section 59 of the Act of 1903, in that he had knowingly and wilfully been carried by the defendant to a point north of his destination, the City of Passaic, to the City of Paterson, with intention to defeat and defraud the defendant in payment of fare. The defendant filed plea of general issue, and subsequently, after the Practice Act of 1912 went into effect, filed an "amended answer" denying the complaint generally, and also setting up that defendant had probable cause to make the charge set forth in the complaint, and to arrest the plaintiff thereunder. The specific facts were pleaded, to-wit, that the plaintiff embarked on train 175 of the defendant, leaving Jersey City at 9.30 A. M., October 13, 1911, and presented a ticket giving him the right

20

30

40

to travel on the train as far as the station known as Passaic and no further; that plaintiff did not alight from the train when he reached Passaic, but on the contrary remained thereon and refused to pay fare or present other transportation beyond Passaic, and when requested to pay fare or present further transportation refused to do so, although informed that under defendant's rules and under the laws of the State, he was required to pay such additional fare or present such further transportation; and thereupon the defendant having probable cause to suspect that the plaintiff having paid his fare for a certain distance, to-wit, from Jersey City to Passaic, was knowingly and wilfully proceeding on such train beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid the payment thereof, filed a complaint and caused the arrest of plaintiff. No "reply" was filed to this answer, and the facts therein alleged may therefore be taken as admitted; but in view of the fact that there may have been at that time, and perhaps still is, some uncertainty as to the pleading under the new Practice Act, and in view of the further fact that the case proceeded to trial, the defendant does not now make any point of this condition of the record. We have, however, called attention to the facts thus set up in the special defense, for the reason *that the evidence shows without dispute* that the facts were as set forth in the plea.

Except for the testimony of Mr. Carroll on certain formal points which were practically admitted (p. 8, l. 10), the only witness called for the plaintiff was himself. Following is a brief summary of the material portions of his testimony: he resides in Passaic and has done so about nineteen years; he is employed as an editor of the New York Evening Journal in New York City. On October 18, 1911,

he left New York about half past eight or quarter to nine, by way of Chambers Street Ferry, and took train 175. Had a commutation ticket from New York to Passaic. He has been about nineteen or twenty years. He arrived at Passaic on that train.

“Q. Now, tell us what happened after your arrival? A. I was asleep, when we came to Passaic, and just after we pulled out of the station, the collector came around and woke me up, and I handed him my commutation ticket. He said, ‘We have gone past Passaic’; we were just going by Harrison St. And I said, ‘Well, stop the train and let me off.’ He said, ‘I can’t, this is an express.’ I said, ‘I don’t want to go to Paterson; let me off at Clifton.’ And he wanted me to pay my fare, and I said, ‘No, I don’t want to go to Paterson.’ And he referred the matter to the conductor, and the conductor came back and said, ‘They tell me you won’t pay your fare?’ I said, ‘That is right.’ He said, ‘Pay or you will be arrested when you get to Paterson.’ I said, ‘I want you to give me a return check’—they have done that before for me when I have gone past but he refused to do it, and when we got to Paterson they called an officer and I was arrested and arraigned before Recorder Carroll” (p. 12, ll. 12-32).

He walked from the station to the court, and then went to Passaic to consult a lawyer. The hearing was continued until October 26th, and the charge was dismissed (p. 13, ll. 1-20).

At the first session of the Recorders Court he was there from half to three-quarters of an hour, and went away very “angry.”

“Q. Were you angry when he told you that you would have to pay fare? A. Not in particular.

“Q. When did you get angry? A. Walking me through the streets.

“Q. Up to that time you did not get angry? A. No.

"Q. But you had refused to pay fare? A. Absolutely.

"Q. And you told the conductor and collector that you would not pay fare? A. Absolutely" (p. 15, ll. 30-40).

When the train arrived at Passaic he was asleep and had been so since leaving Jersey City. Said nothing to the conductor or anyone about waking him up at Passaic.

10 The police officer that arrested him was Mr. Bott (p. 16, ll. 1-25).

On the evening before, he had been at a card party, at a club room with some of the Journal boys, playing poker. The game broke up about 6:30 in the morning (p. 17, ll. 10-40). It had started between 8 and 9 o'clock the evening before, and continued all night. During that time he had had a few drinks of Irish Whiskey—"just a moderate gentleman's drink" (p. 18, ll. 1-15).

20 The plaintiff's evidence was not questioned by the witnesses for the defendant. Officer Bott of the City of Paterson said that he made the arrest, and that before plaintiff was arrested he heard him say he "did not think it was right that he should pay any fare" (p. 22, l. 10). Plaintiff was "partially intoxicated" (p. 23, l. 10). "You could tell by the way he acted, he staggered just a little bit" (p. 23, l. 30). "He showed signs of liquor" (p. 24, l. 5). Plaintiff himself said to the officer, "I want you to understand that I have been drinking and I am somewhat intoxicated but not so much but I know what I have been doing" (p. 24, ll. 10-20).

30 Conductor Burns was running train 175, and said that his attention was first called to the difficulty between Clifton and Paterson. The plaintiff "refused to pay his fare from Passaic to Paterson, and shoved me away" (p. 25, l. 30).

40 "Q. What explanation did you make? A. That he would have to pay his fare. That

that was the rule, and the law of the state he was riding in; and he shoved me away, and I think he swore" (p. 25, l. 35).

He had been drinking "quite some". "He was pretty well under the influence of intoxicating liquor."

"Q. But what was there in his actions or words to indicate that? A. He was very rough to me in the train, and when he left the train at Paterson I put my hand on his shoulder and said, 'You will have to pay your fare,' and he shoved me away as if he would strike me, and he went over near the Telegraph Office, and I stopped him and put him in charge of Mr. Bott.

10

"Q. And did you recall any of the language he used? A. Some profane language.

"Q. Do you remember what it was? A. I think he called me a son of a b— and shoved me away, and then Mr. Bott came and took charge of him" (p. 26, ll. 10-25).

20

On cross examination the witness said he did not know that the plaintiff was a regular commuter and that he thought he was trying to beat the Company out of a fare because several others had tried to do it. "I did not know he was any different from any other man. They do it every day." "The law of the state, and the rules of the Company, require him to pay his fare" (p. 27, ll. 10-20).

30

Further explanation by the conductor of why he thought the plaintiff was trying to avoid the payment of fare was because he was under the influence of liquor and ugly, and when he got to Paterson, instead of going up the street he was going around the depot (p. 27, l. 35, to p. 28, l. 1). There were about five cars on the train with about two hundred and thirty-five or forty people.

"Q. Have you had other instances where people tried to beat their way beyond stations? A. Every day, sir" (p. 28, ll. 30-40).

40

The fare is twelve cents. The witness tried to tell the plaintiff, but he would not pay any attention (p. 29, ll. 10-20). When plaintiff was arrested he was about ten or twelve feet from the train, at the corner of the depot, going *through the yard*. "He threw me away and I stopped him until the officer came" (p. 29, ll. 30-40).

Brakeman Paret noticed some trouble between the conductor and the plaintiff, but did not stop
 10 to listen. The train at that time was at Lake View (this is between Passaic and Paterson). The next stop after leaving Passaic was Paterson. Plaintiff was riding in the rear coach. I called out Passaic station twice. It was called out in the coach where plaintiff was, and called "loud." It was loud enough for any passenger to hear me if he was listening or awake.

Before the train left Jersey City, witness went
 20 through the car and announced the stations where it would stop (pp. 30, 31). The announcement at Jersey City was made before the train started. This is made in every car three minutes before the train leaves (p. 32, ll. 1-30).

George J. Ryerson, who is engaged in the moving picture business at Middletown, was at the railroad station at Paterson.

30 "Q. What did you see and hear? A. As I was getting off on the train that I believe leaves Paterson at 10:03 o'clock, the conductor and this man Mallery had some argument about the fare, the price of a ticket. The conductor said, 'You will have to pay your fare,' and they had an argument concerning that, and Mr. Burns had his hand on his shoulder, and he kind of turned back, this way, and you could take it he was either going to strike the man, or not.

"Q. Did he swear? A. Yes, he swore.

"Q. Who? A. Mallery.

40 "Q. And what did he say? A. It sounded to me like son of a b——.

"Q. You said son of a bitch? A. Yes, sir, that is what it sounded like.

"Q. How close were you to them? A. About five or six feet.

"Q. And you afterwards took the train? A. Yes, sir, and went on about my business" (p. 33, ll. 15-35). (See also p. 34, ll. 20-40).

Mrs. Ryerson, wife of last witness, was also at the station and heard the conductor ask him for money for his fare which he refused to pay. He cursed and swore at the conductor and I thought he was going to strike him (p. 35, ll. 10-30). 10

Plaintiff recalled in rebuttal denied that he had used the vile language testified to by the defendant's witnesses, but he did admit that when the conductor told him he must pay his fare or be arrested, he said, "arrest and be damned" (p. 38, ll. 1-20).

It will be seen that both the plaintiff and the defendant's witnesses agree substantially as to what happened. The only dispute at all is as to the exact language used by the plaintiff. It appears, therefore, without dispute, (1) that plaintiff's ticket entitled him to transportation as far as Passaic and no further; (2) that he was riding on an express train which made no stop between Passaic and Paterson; (3) that the stopping points of the train were announced before it left Jersey City, and that the arrival of the train at Passaic was announced within the hearing of the plaintiff; (4) that plaintiff had been gambling and drinking all night and was at least partially intoxicated when he got on the train at Jersey City, and fell asleep; (5) that he remained asleep until after the train had passed Passaic and was going by Harrison Street in that City, and then he asked the collector to stop the train, and that this was not done because it was an express; (6) that he did not request any employe of the defend- 20
30
40

ant to wake him up on the arrival of the train at Passaic; (7) that after the train left Passaic and before it reached Paterson, plaintiff was asked to pay the extra fare amounting to twelve cents, and refused to do so; (8) that when the train arrived at Paterson, he left the train and started to go around the corner of the station through the railroad road instead of walking up the street; (9) that there were two hundred and thirty-five or forty passengers on the train, and that the conductor had experiences every day with passengers trying to beat their way beyond the stations to which their transportation entitled them to ride; (10) that it was not until after plaintiff had refused to pay his fare and after the train had arrived at Paterson, and after the plaintiff started to leave the station by an unusual way, as if he were trying to escape, that any attempt was made to arrest him, and he was then placed in the hands of an officer of the City who took him to the Recorders Court where the complaint was sworn out by the collector of the train. When the facts are undisputed in a false arrest case, the question of probable cause is one for the court, and not for the jury.

Stricker v. P. R. R., 60 N. J. L., 230, at page 235;

Bell v. Atlantic City R. Co., 58 N. J. L., 227.

The trial judge in accordance with the request of the defendant charged that a passenger carried beyond his destination while asleep is not entitled to a free passage to the next station; and further, that the employes of the defendant were not under any obligation to awaken the plaintiff at the arrival of the train at Passaic (p. 42, ll. 1-15). The rules thus charged are therefore the law of the case. These requests, no doubt, express correctly the legal principles applicable to the facts.

(See Moore on Carriers, p. 688. *Texas, etc., R. Co. v. James*, 82 Tex., 206; 18 S. W., 589; 15 L. R. A., 347; *Gulf, etc., R. Co. v. Green*, 141 S. W., 341).

The case last cited further holds that if a sleeping passenger is carried by his station, he becomes a trespasser, and is subject to ejection (though the carrier may not put him off at an unsafe place). While of course the question of the right of the defendant to eject the plaintiff in this case by reason of non-payment of fare from Passaic to Paterson is not involved, for the reason that the defendant did not so eject him, nevertheless the fact that after the train left Passaic this plaintiff was in law a trespasser, is an additional justification for the belief of the defendant's servants that—like many other such passengers—he was trying to travel beyond the point to which he had paid his fare. If it had been shown that the defendant's servants *knew* that the plaintiff was asleep when the train reached Passaic, possibly that fact might have put them on inquiry with respect to the intent of the plaintiff, but there is no claim that any of the defendant's employees knew or had any reason to suspect that this plaintiff had fallen asleep in broad daylight on a short trip between Jersey City and Passac.

We submit that there was no room for a jury question under the admitted facts of this case, and that therefore the question of probable cause should have been resolved in favor of the defendant as a matter of law; and it follows that the defendant's motion for non-suit should have been granted, or the jury should have been directed to return a verdict in its favor in accordance with the request submitted to the trial judge.

Further, it should be noted that the arrest was not made by any employe or agent of the de-

10 defendant, but by a member of the city police. The plaintiff did not offer any evidence as to the nature of the complaint which the defendant's collector made before the Recorder, but assuming that it was a complaint based upon Section 59 of the Railroad Act, it will be observed that *before* complaint was made, plaintiff had already been arrested. In view of the testimony, it may well be that the arrest would be justified on the ground that the plaintiff was drunk and disorderly. But however that may be, there was no action taken by the defendant's servants until after the plaintiff had already been put under arrest by officer Bott. On this ground also the motion for non-suit or the request to direct a verdict should have been granted.

II.

20 **There was error in the charge of the trial judge.**

Exceptions were taken to certain parts of the charge. These are quoted in ground number three (pages 1 and 2). By reference to that part of the charge quoted in ground number five, it will be seen that the trial judge left to the jury the question of whether the defendant had "probable cause" for the arrest of the plaintiff (see p. 40, l. 30, to p. 41, l. 10). For the reasons stated 30 under Point I, we submit that this was not a question of fact at all for the jury to pass upon; it was therefore error to leave that question to the jury.

But still another question arises under the charge; it is whether there was error in that part thereof which submitted to the jury as the important and decisive question for them to consider whether the plaintiff "knowingly" and "wilfully" proceeded on the train beyond his destination without previously paying the additional 40 fare from Passaic to Paterson, and with intent to

avoid payment thereof. We submit that on this point the charge was insufficient; the important question was not merely whether the plaintiff knowingly and wilfully did certain things which amounted to a violation of the statute, *but whether the defendant's servants had reasonable cause to believe that he had such intention.*

Thus in *Stricker v. Pennsylvania Railroad Co.*, 60 N. J. L., 230, this court in sustaining a non-suit in an action for false arrest and malicious prosecution brought under the section of the Railroad Act in question said (*italics ours*):

“It clearly appears, I think, that the plaintiffs failed to show that the conductor of defendant's train, in making the arrest complained of, acted without any reasonable or probable cause as alleged in the declaration. The facts alleged are such as would certainly warrant a reasonable man *in the belief* that the plaintiffs were guilty of the offence charged in the statute, and such *a belief* in the actor, thus engendered, is what I understand to be probable cause for the action complained of. When the facts are undisputed, the question of probable cause is one for the court. * * * And my conclusion is that the plaintiffs' proof having failed in this particular, the non-suit is justified for that reason, and must therefore stand” (p. 235).

For these reasons we submit that the judgment should be reversed and a new trial ordered.

COLLINS & CORBIN,
Attorneys of Defendant-Appellant.

GEO. S. HOBART,
Of Counsel.

