

No. 12798

Supreme Court of Illinois

Galena & Chicago Union R. R. Co.

vs.

Goldberg

~~54~~ 56

Chas. A. Ring

Rob. M. Wilson

56

1687

1859

12798

In the Supreme Court—

The Galena & Chicago Union Rail
Road Company — appellant

S Goldsburg appellee

And now comes the said appellant
and says there are manifest errors in
the record and proceedings of this
cause — and assigns the following

The Court erred in refusing the
second and third instructions asked for
by the appellant in the Court below.

The Court below erred in giving the
instructions asked for by the appellee
in the Court below.

The Court below erred in overruling
the motion for a new trial —

A. Hearn & Leck
for appellant

Tuesday October 20. AD 1857

United States of America

State of Illinois

McHenry County

G. P. Pleas before the
Hon Isaac G. Wilson

Judge of the Thirteenth Judicial Circuit
of the State of Illinois and presiding
Judge of the McHenry County Circuit
Court at a Circuit Court begun and
held at Woodstock in said County
on Tuesday the Twentieth day of October
A.D. 1857 and of the Independence of the
United States the Eighty Second

Present Hon. Isaac G. Wilson

Attest

John Eddy Sheriff

And hitherto to wit on the 18th day of
November in the year of our Lord 1856

in the office of the Clerk of said Court his
narration which is in the words and figures
following to wit;

State of Illinois
McHenry County

Sp. Of the November Term
of the McHenry County
Circuit Court in the year
of our Lord One thousand
Eight Hundred and fifty six.
Simon Goldsburgh Plaintiff in this Suit
Complainant of the Galena & Chicago Union Rail
Road Company is Corporation under the Laws
of the State of Illinois which has been sum-
-moned to answer of a plea of trespass in
the case. Nor that whereas the said defendant
before and at the time of committing the
grievance hereinafter mentioned was owner
and proprietor of certain passenger coaches
or cars for the carriage and conveyance of
passengers from Chicago in the County of Cook
State of Illinois to Marengo in said McHenry
County and the said Defendants being such
owner and proprietor of the said cars as afore-
-said thereupon heretofore to wit on or about
the twenty fifth day of February in the year
of Our Lord One thousand Eight Hundred and
fifty six to wit at Chicago aforesaid to wit
in the County of McHenry aforesaid the
said Plaintiff at the special instance and
request of the said Defendant was a pass-
-enger in one of the said Cars to be safely
and securely carried and conveyed thereby
on a certain journey to wit; from Chicago

aforesaid to Marengo aforesaid for a certain
 fare and reward to the said Defendant in
 that behalf and the said defendants then
 and there received the said Plaintiff as such
 passenger as aforesaid and thereupon it then
 and there became and was the duty of the
 said defendant to safely and securely carry
 & convey by & upon the said coach or car
 the said Plaintiff on the said journey from
 Chicago aforesaid to Marengo aforesaid. Yet
 the said Defendants ^{well} knowing the premises but
 not regarding their duty in that behalf
 did not safely & securely carry & convey upon
 the said Car or coach the Plaintiff on
 the said journey from Chicago aforesaid to
 Marengo aforesaid although the said plaintiff
 was ready and willing & then & there offered
 the said defendant to pay them therefor
 but after having carried and conveyed the
 said Plaintiff on a part of the said journey
 to wit about the distance of forty five miles
 the said Defendant permitted and suffered
 their agents and servants against the wish
 & consent of said Plaintiff to put off and
 eject the said Plaintiff from said car or
 Coach at an intermediate point & at a
 distance short of said Plaintiff's journey
 of at least twenty miles to wit at McHenry
 County aforesaid and by their said agents
 and servants caused ~~those~~ said agents and
 servants Plaintiff to be ejected from said car
 in a scandalous and disgraceful manner
 and thereby exposed the said plaintiff at

a late hour of the day and at a long distance from shelter or protection wholly unprotected, to a violent and severe wind & Snow Storm then raging, and to the rigors of a cold & stormy winter night whereby & also by the contemptuous usage and insulting language addressed to the Plaintiff by the said agents and servants in effecting said eviction, the plaintiff became greatly bruised and injured and also by means of the premises the said Plaintiff became and was sick, sore lame & disordered and so remained & continued for a long space of time to wit hitherto, during all which said times the said plaintiff suffered & underwent great pain & was hindered and prevented from transacting and attending to his necessary & lawful affairs by him during all that time to be performed and transacted and lost and was deprived of divers great gains, profits and advantages which he might and otherwise would have derived and acquired and thereby also the said Plaintiff was forced & obliged to & did then and there pay, lay out and spend divers large sums of money amounting in the whole to the sum of One Hundred dollars in and about endeavoring to be cured of the said injuries and bruises so received as aforesaid and also thereby incurred great expenses in and about his necessary support & maintenance during & while he was so detained and recovering from his said injuries to wit at McHenry County aforesaid

And whereas also heretofore to wit on the day and year aforesaid to wit at Wheaton in the County of Du Page & State of Illinois to wit in McHenry County County aforesaid the said Plaintiff at the special instance and request of the said Defendants became & was a passenger by a certain other coach or car then & there owned, managed and controlled by said defendants to be safely & securely carried and conveyed thereby on a certain journey to wit; from Wheaton aforesaid to Marengo McHenry County Illinois aforesaid for certain reward to the said Defendants in that behalf and thereupon it then and there became & was the duty of the said Defendants to safely and securely carry and convey the said Plaintiff by the said last mentioned car or coach on said journey from Wheaton aforesaid to Marengo aforesaid, yet the said Defendants not regarding their duty in that behalf did not safely & securely carry & convey upon & by said last mentioned car or coach the Plaintiff aforesaid on the said journey from Wheaton aforesaid to Marengo aforesaid but wholly neglected & refused so to do although the said Plaintiff was ready & willing and offered the said defendant to pay them therefor but after having carried and conveyed the said Plaintiff on a part of said journey to wit about the distance of twenty miles, the said defendant by their servants and agents wilfully maliciously & forcibly against the

wish & consent of said Plaintiff put off and
ejected the said Plaintiff from said car
or ~~coach~~ coach at an intermediate point
& at a distance short of said journey of
said Plaintiff of at least twenty miles
and by their said agents & servants caused
the said Plaintiff to be ejected from said car
in a scandalous and disgraceful manner
and thereby then & there exposed the said
Plaintiff at a late hour of the day and
at a great distance from any place of shelter
or protection, and in a weak and feeble
condition wholly unprotected to a violent
and severe wind and snow storm then & there
raging and to the rigors of a cold & stormy
winter night whereby and also by contemptuous
usage and insulting language addressed to
the Plaintiff by the said Agents in effecting
said Ejection the Plaintiff became greatly
bruised and injured and also by means
of the premises the said Plaintiff became
and was sick sore lame and disordered
and so remained and continued for a
long space of time to wit: hitherto during
all which time the said Plaintiff suffered
fundament great pain and was hindered
and prevented from transacting & attending
to his necessary & lawful affairs and business
by him during all that time to be performed
and transacted and lost and was deprived
of divers great gains, profits & advantages
which he might and otherwise would have
derived and acquired from the same and

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thence also the said Plaintiff was forced
and obliged to and did then and there pay
lay out and expend divers other large sums
of money amounting in the whole to the
sum of One Hundred Dollars in and about
endeavouring to be cured of the said last
mentioned bruises and injuries so received
as last aforesaid and thereby also the said
Plaintiff was kept and detained at Muncie
in the County of McHenry along time to wit
for the space of two weeks and during that
then incurred great expense in the whole
amounting to a large sum of money to
wit the sum of twenty Dollars in and about
his necessary support and maintenance to
wit at said County of McHenry aforesaid

9th

And Also for that whereas the said
Plaintiff purporteth to wit on the twenty fifth
day of January A.D. 1856 to wit at Mc.
Henry County aforesaid had been received
and ~~was~~ then and there^{as} a passenger on board
of a certain other passenger train then &
there owned & conducted & managed by the
said Defendants who then & there were
common carriers of persons for hire
to be by them conveyed from Wheaton's Station
in the County of Du Page & State of Illinois
to Muncie in McHenry County aforesaid
said by reason whereof the said
Plaintiff then & there was entitled to be
conveyed on said train without molestation
or injury from said defendants their

Servants & agents from Wheaton's Station
 aforesaid to Muncie aforesaid, and
 whereas the said Plaintiff before the
 committing of ~~the~~ ^{the several} grievances hereinafter
 set forth had tendered to the proper lawful
 agent of the said Defendants the full fare
 there demanded by the said Defendants and
 usual & customary between the points aforesaid
 by means whereof the said Plaintiff at the
 time of committing the grievances hereinafter set
 forth went at McKim County aforesaid
 was lawfully entitled to all the rights privileges
 & immunities of a passenger on said train
 and especially to be permitted to fulfil his
 said journey between the Stations aforesaid
 without hindrance from the said Defendants
 their agents or servants

Yet the said Defendants well
 knowing the said several premises in this
 Court mentioned on the day and year
 in this Court just aforesaid to wit
 at McKim County aforesaid wrongfully
 & knowingly without any lawful or reasonable
 excuse permitted & suffered the said Plaintiff
 to be expelled from said train wherein he then &
 there was a passenger as aforesaid by the
 servants & agents of the said Defendant at
 a point far removed from any Station of
 said Defendants & before the arrival of said
 train at Muncie aforesaid & thereby then &
 there suffered & permitted the said Plaintiff
 to be hindered and prevented from the completion
 of his said journey and to be exposed to the

great inclemency of the weather, by means
whereof the said Plaintiff hath suffered
great damage to the amount of three
thousand Dollars & therefore he brings
his Suit &c.

Harburt & Sperry
Plffs Attys.

And now heretofore to wit on the 20th day
of ~~Decem~~ November A.D. 1856, being one
of the days of the November Term of
said Circuit Court aforesaid for the year
of our Lord One thousand eight hundred
and fifty six the following among other
proceedings were had that is to say;

Simon Goldsburgh }
or } Case
Galena Chicago U.R.R. Co }

And now
came the Defendant by ~~Leon~~ and files
his demurrer to the second Count in the
declaration of the said Plaintiff in which
the Plaintiff by Harburt joins and the
Court having heard the parties therein takes
the same under advisement.

Said Pleas of Demurrer being in and
& signed as follows to wit:

State of Illinois }
McHenry County }
McHenry County
Circuit Court

For Term A.D. 1856
 G. R. C. M. R. R. Co
 vs
 Simon Goldsbrough

And said Defendant
 by A. B. Coon their Attorney
 comes and defends the wrong and injury
 when &c. complained of in the 1st & 2^d counts,
 in the Declaration mentioned and say that they
 are not guilty of the said supposed grievances,
 above thereof in said counts laid to their
 charge or any or either of them or any part
 thereof in manner and form as the said
 Plaintiff hath thereof in said counts com=
 -plained against them and of this they put
 themselves upon their country

A. B. Coon Def. Atty.
 And the said ~~Defendants~~ ^{Plaintiff} as to the plea of
 the said Defendant above pleaded whereof he
 puts himself upon the country doth the like

And for a further plea in this behalf the said
 Defendants say and return as to the 1st & 3^d
 counts in said Declaration mentioned because
 they say that at the time when &c. the
 said Plaintiff failed and neglected & refused
 to pay his reasonable fare exacted & required
 by the rules & regulations of said Defendants
 by reason of such neglect & refusal
 of said Plaintiff to pay such reasonable
 fare such carriage, the said Defendants by
 their servants & agents expelled & put said
 Plaintiff off & out of said cars as they
 lawfully might using no more force than

was necessary which are the same supposed
grievances complained of in said counts
mentioned & not other and different one
of this they are ready to verify wherefore
they pray Judgment &c.

A. B. Leon Deft's Atty

Geo. C. W. R. R. Co.

ats.

Simon Goldsburgh

And the said Defendants
by A. B. Leon their
Attorney comes and defends the wrongs and
injury when &c and say the said Second Count
of the said Declaration and the matters therein
contained in manner and form as the same
are above stated and set forth are not sufficient
in Law for the said Plaintiff to have or
maintain his aforesaid action thereof of
said Defendants and they the said Defendants
are not bound by Law to answer the same
& And this they are ready to verify whereupon
by reason of the insufficiency, of the said
2^d Count of the said Declaration in that behalf
the said Defendants pray Judgment and
that the said Plaintiff may be barred from
having or maintaining his aforesaid action
thereof against them &c.

A. B. Leon Deft's Atty

And for causes of Demurrer the Defts
assign the following.

1st Said Count is in Trespass and not in Case

2^d It is said in said Count that the grievances

was committed by force.

J. There is no verdict said in said Court
when the injury was committed

4th. For other insufficiencies and irregularities
(Endorsed) filed Nov. 20. 1886. ^{Wm. Johnson etc} S. R. Green Dept. Atty

Simon Goldsbrough }
vs } Case
G & C. W. R. R. Co. } And now comes
Hurlbut and files
his answer to the Special Plea of the
said Defendant filed herein in which the
defendant by con joining and the Court having
heard the parties thereon takes the same
under advisement

Simon Goldsbrough }
vs }
G & C. W. R. R. Co. } And the said Plaintiff
by Sherry & Hurlbut
his Attorneys comes
and as to the plea of
the said Defendant by them secondly above
pleaded saith that the same and the
matters therein contained in manner & form
as the same are above pleaded and set
forth are not sufficient to bar or preclude
him the said Plaintiff from having or
maintaining his aforesaid action thereof
against the said Defendant and that he
the said Plaintiff is not bound by law
to answer the same and this he the

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Said Plaintiff is ready to verify. Wherefore
by reason of this insufficiency of the said
Plea in this behalf the said Plaintiff prays
judgement and his damages by him sustained
on occasion of the committing of said wrong
to be adjudged to him

Sperry & Hurlbut

Plffs. & Atty.

And for cause of Demurrer States & shows, ^{to} the
Court here the following cause of demurrer to
said Second plea

1. That the said Plea amounts to the general issue

2. That said plea purports to be in bar to said
1st & 3^d Counts but does not answer the
material averments in said Counts.

Amos Goldsborough

or
Galena & Chicago Union
Rail Road Company

Defendant

And the
Court being
fully advised in the Demurrer to the Second
Count of the Plaintiff's declaration sustains
the same. It is therefore ordered that the
Defendant have and recover of the Plaintiff
his costs and charges about his Demurrer
expended and that he have execution therefor
And the Court being fully advised on the
demurrer of the Plaintiff to the Special
plea of the defendant sustains the same
It is therefore ordered that the Plaintiff
have and recover of the Defendant his costs

and Charges about his Termers expended
and that he have execution therefor

And thereafter to wit on the 24th day of November
of the ~~month~~ year last aforesaid, the following
further proceeding was had to wit:

Simon Goldsbrough

vs
Gt C. W. R. R. Co.

Case

And now comes
the defendant by
Cloon and on his motion it is ordered
that this cause be continued and that
the Plaintiff have and recover of the
Defendant his costs and charges about
this Term expended and that he have execu-
tion therefor

Thereafter to wit on the 28th day of
March A. D. 1854 being one of the days of
the March Term of said Circuit Court aforesaid
for the year of our Lord 1854. the following
among other proceedings were had that is
to say:

Simon Goldsbrough

vs
Galena C. W. R. R. Co.

Case

And now comes
the Plaintiff by Spary
his Attorney and files his affidavit therein &
for reasons therein set forth, moves the
Court for a continuance of this cause
and the Court being fully advised

therein sustains the same but doth further order and adjudge that the Defendant have and recover of the Plaintiff his costs and charges about this Term expended And that he have execution therefor

Thereafter to wit on the 21st day of October A.D. 1854 being one of the days of the October Term of said Court afores^d. for the year of our Lord 1854, the following proceedings were had viz^t:

Simon Goldsburgh I
or Case
Galena & Chicago W.R.Co I

And now comes the Plaintiff by Sherry and the Defendant by Levon and thereupon it is ordered, that a jury be called and there came a jury of twelve good and lawful men to wit; David James, Abner King, James Winnie, George Bunker, Jacob Petrie, C. H. Dufield, Herman Gibbs, William Keill, Thomas Hallam, Patrick Colman, A. H. Shapley, Alexander Bishop, who being sworn to well and truly try the issue joined and having heard the evidence and arguments of counsel and the instructions of the Court retired to consider upon their verdict, and thereafter return and bring into Court for verdict that they find the Defendant guilty and assess the damages at the sum of one hundred

Hundred and fifty dollars, whereupon the Defendant by Leon his Attorney enters his motion for a new trial and in arrest of Judgment

Thereafter to wit on the 31st day of same month and year last aforesaid, further proceedings were had as follows to wit;

Simon Goldstark
 vs
 Gulena & Co. U.R. & Co. of lease

And now come the parties to this suit by their respective Attorneys and the Court having heard the parties on the motion for a new trial overrules the same. To the opinion of the Court in so overruling said motion the Defendants by their Counsel except. It is therefore ordered and considered by the Court that the Plaintiff have and recover of the Defendants the sum of nine hundred and fifty Dollars his damages so assessed as also his costs and charges herein expended and that he have execution therefor And thereupon the Defendants pray an appeal herein to the Supreme Court which is granted upon condition that they enter into bonds conditioned according to Law in the sum of Two Thousand Dollars before the Clerk of the Court with John P. Turner, Wm. H. Brown or J. H. Raymond as Surety and that the Bill of Exceptions be filed within Sixty days.

Know all men by these Presents that we the Galena & Chicago Union Rail Road Company by its President and Secretary John B. Turner are held and firmly bound unto Simon Goldsburgh in the penal sum of Two Thousand Dollars for the payment of which sum well and truly to be made the said Galena & Chicago Union Rail Road Co. binds itself & its successors in office and the said John B. Turner binds himself his heirs executors & administrators jointly severally & firmly by these presents. Witness the Corporate Seal of the said Rail Road Co. & the Seal of the said John B. Turner this sixteenth day of November A.D. 1857

The Condition of the above obligation is such that whereas the above named Simon Goldsburgh did at the October Term of the McKean County Circuit Court for the year A.D. 1857 recover a judgement against the above bounden Galena & Chicago Union Rail Road Company for the sum of one hundred and fifty dollars & costs of suit from which judgement the said Galena & Chicago Union Rail Road Company has prosecuted an appeal to the Supreme Court of the State of Illinois. Now if the said Galena & Chicago Union Rail Road Company shall prosecute its said appeal with effect & without delay or in case of failure therein shall well & truly pay & satisfy the said Simon Goldsburgh his said judgement, costs, interests

damages in case said Appeal shall be
 dismissed or said Suit shall upon trial be
 affirmed in said Supreme Court in whole
 or in part - then the above obligation to be
 paid otherwise to remain in full force & effect

Seal

John D. Turner President
 Attest John D. Turner Seal
 W. M. Sarrabee Secy

In presence of

P. A. Hale

(Endorse) Held Nov. 15. 1857

Geo. W. Kesson Clerk.

State of Illinois
McHenry County

McHenry County
Circuit Court
October Term
A.D. 1857.

Simon Goldstuegh

vs
Galena & Chicago Union
Rail Road Company

Be it Remembered
that on the trial of this cause on the 21st
day of October 1857 said day being one of
the days of said Term the following proceedings
were had to wit; after empanneling and
swearing the jury in said cause the Plain-
tiff offered the following evidence to wit; The
deposition of Mrs. Samuel Warner who
testified that she was riding upon the
cars of the defendants in the winter of A.D.
1855 & 6. between Elgin & Marenzo - the Plain-
tiff was upon the cars - the Conductor of the
train (Augustus Wiggings) came along
and said to the Plaintiff "there is another
one who has not paid his fare" - the Plaintiff
said he had. - the Conductor said he had
not & must go off the cars. - the conductor
talked considerably, The Plaintiff said
if you will let me talk I will tell you &
show you the money that you gave me
back - the Conductor would not hear a word
to it but rang the bell for a man to come
in from the other car. - the conductor said
to him - put this man off, he has not paid
the plaintiff cries and says don't throw

me from the Cars - I will pay you over rather than be thrown set off here - the plaintiff took money from his pocket & offered it to the conductor - the conductor would not take it - he & the other man took him & threw him off the cars with his money in his hands - as far as I could see he had it in his hand - they said it was about three miles from my station it was just dark, I think it was just dark & seven O'clock - the weather was very cold & stormy - it was snowing. Mr S. D. Spencer of Murengo was present at the time - I think the cars were in motion when he was put off - the plaintiff after he was thrown off called for his baggage - they threw quite a large valise & his hat off after him. I think the plaintiff was taken by the collar & by the & forcibly pushed off. The conductor refused to take the plaintiff's money & said take him off - the plaintiff wished & offered to pay his fare to Murengo I never saw the Plaintiff afterwards.

D. Spencer was sworn & testified as follows: I was on the cars at the time spoken of by Mrs. Warner. It was the latter part of January or the first of February A. D. 1856 between Elgin & Gilberts Station the conductor of the train (Augustus Wiggins) came along & called on some Dutch peddlers to pay the fare - they said they had paid & would not pay again - one of them said he had paid to Rockford & told how much

he had paid to Rockford and told how much he
 had paid - the conductor replied there
 was no such fare & they must pay or go
 off the Cars - they would not pay - the
 conductor stopped the train & put them off -
 the train started & the Conductor came to
 the Plaintiff & said damn them here is another
 Dutch or Jew peddler that has not paid &
 he must go off the Cars - the Plaintiff said
 he had paid to Wheaton & could tell the Conductor
 what kind of money he gave him back in
 Change - the Conductor said he had not, &
 said the damned Dutch peddlers were trying
 to steal their rides all the time. then he rang
 the bell to stop the train & called a brakeman
 to help put him off - the plaintiff said he
 would pay the balance of his fare to Marengo
 where he wanted to go & took the money out
 of his hand & offered to the Conductor - the Con-
 ductor would not take it - he & the other
 men grabbed hold of him, forcibly pulled
 him out of his seat, pulled & broke the seat
 down in the scuffle & threw the plaintiff off the
 Cars - the plaintiff all the while begged not to be
 thrown off & said he would rather pay double
 the Conductor seemed very angry at the
 time - the plaintiff hat & pack or Valise
 was thrown off after him - the cars had stopped
 when he was put off - it was dark and about
 seven O'clock - it was very cold & snowing at
 the time - Elgin & Gilbert Station is about seven
 miles apart - several of the passengers and
 one from Beloit in particular expostulated

& remonstrated with the conductor not to throw the Plaintiff off - but he was very mad & said he would & did - I saw the Plaintiff a day or two afterwards at Marengo - Saw him at the Hotel there - He was in Company with Isaac Simon, a country man of his - the Plaintiff was a Dutch peddler - he stopped at the Hotel in Marengo several days. It is 17 miles from Wheaton's Station to Elgin & twenty four miles from Elgin to Marengo - there are four Stations between Wheaton's and Elgin -

Isaac Simon was then sworn who testified that he saw the Plaintiff at the Hotel in Marengo a day or two after the time of being thrown off the cars with M. S. D. Spencer, knew the Plaintiff before that time, he came to Marengo the next day after he was thrown off, he enquired for a Lawyer, I introduced him to Esq. Sperry who is now his Attorney the same or the next day he enquired for a Physician, I employed one for him, he complained of being ill & sore - the Physician attended him he remained at the hotel several days or a week complaining some - have seen him once or twice since he now lives in Chicago - on Randolph Street a part of the time & the rest of the time on the Mississippi River I think at Moline or Quincy, The Defendant's Attorney A. B. Leven has frequently enquired of me to know where the Plaintiff was or where he resided & said he wanted to settle with him, I refused to tell him where he resided. At one

time I asked the plaintiffs Attorney what he would give me to tell him where the Plaintiff resided he made me no offer or reply. It was by the suggestion of the plaintiff's attorney that I refused to tell where the Plaintiff resided. It

It was further admitted that at the time of the injuries complained of the Defendants were common carriers of passengers and goods.

The above was all the evidence on the part of the Plaintiffs who there rested his case.

The Defendant then called Augustus Wiggings who was sworn and testified that he was Conductor on the train that four Dutch or Jew peddlers had paid their fares at Chicago two for Wheaton & two for Clinton the first station East of Elgin. After leaving Elgin he came to two of them and called upon them for their balance of their fare they refused to pay and claimed they had paid - they had not. I stopped the train & put them off. I then came to the other two - one said he had paid St. Marys and would not pay again. I stopped the train & put him off - he struggled considerably before we got him off - we tore down the seat and the car in the scrape - he might have offered me the money after the train stopped but if he had I would not have taken it - I would put him off them any way, the other Peddler paid his fare and I did not put him off.

had frequently put Dutch peddlers off from the train for refusing to pay fare - they were in the habit of paying their fare part of the way and then claiming they had paid all the way and trying to steal the balance of their fare - this was a frequent occurrence with that class of people and I had been much annoyed by them - when I put the Plaintiff off it was just dark - there was some snow on the ground - it was cold and snowing - it was about two miles west of Elgin

The above was all the evidence given in said case. The Plaintiff then asked the following instructions which the Court gave to wit:

The Court is requested to instruct the Jury &

That if they believe from the evidence that the Plaintiff without his consent was forcibly put out of the cars of Defendants by the Conductor between Stations they should find for the Plaintiff

That if the Jury believe from the evidence that the agents of the Defendant refused to receive the fare when tendered by the Plaintiff & that the Plaintiff did tender sufficient for fare to Muncie and after such tender was forcibly ejected from the cars by the agents of the Defendant such facts constitute a cause of action and the Jury should find

Gives -

Gives -

for the Plaintiff

That if the Jury believe from the evidence that the servants & agents of the Defendant forcibly & without sufficient excuse ejected the Plaintiff from their cars they should find for Plaintiff

That unless the Jury believe from the evidence that the Defendants were justified in putting the Plaintiff off their cars they should find for the Plaintiff" — to the giving of which each and every of said instructions the Defendant by its counsel then and there excepted.

The Defendant then asked the following instruction which was given by the court, to wit:

The Jury are instructed that in this action the Defendant is not liable for the acts of servants except as when committed in regular employ of the Defendants and that such liability does not extend to any willful & malicious conduct on the part of a Conductor done and performed by him on his own account and to accomplish any private purposes of his own, or to gratify his own feelings against the Plaintiff and if the Jury believe from the evidence that the acts of the Conductor in reference to the Plaintiff, were committed from

motives personal to himself and not as a servant of the Defendant, then it is their duty to find for the Defendant.

The Defendant then asked the following instructions which were refused by the Court. to wit:

If the Jury believe from the evidence that the acts complained of by the Plaintiff were done by the servants of the Defendant willfully & maliciously then they must find for the Defendant

If the Jury believe from the evidence that the Conductor put the Plaintiff off of the Train after he had offered to pay his fare and done it with force and malice maliciously or wilfully, then such conductor would be personally liable to the plaintiff for such wrong, but the Plaintiff can not recover for the same against the Defendant.

To the refusing of each and every of ~~said~~ said instructions the Defendant by its Counsel then and there excepted.

The Jury then retired to consider upon their verdict and subsequently came into Court and for a verdict say they find the Defendant guilty and assess the Plaintiff's damages at a fine hundred and fifty dollars (\$150.)

Whereupon the Defendant by its Counsel returns and files his motion for a new trial for the following reasons to wit. 1st the Court gave improper instructions for the Plaintiff 2^d the Court refused proper instructions on the part of the Defendant

3^d. The verdict is against the Law. 4th. The verdict is against the evidence. 5th. The verdict is against the weight of evidence. 6th. The verdict is against the instructions of the Court. 7th. The Damages are too high. 8th. The Damages are excessive & exemplary and afterwards to wit on the 30th day of October A.D. 1854 said day being one of the days of said Term and the Court being still in session the Court being fully advised on said motion for a new trial overruled the same and rendered final judgment upon the verdict against the Defendant for said one hundred and fifty dollars. To the overruling said motion for a new trial as well as for rendering final judgment upon the verdict by the Court, the Defendant by its Counsel then and there excepted and prayed an appeal to the Supreme Court of the State of Illinois, which was granted upon the Defendants filing bonds with the Clerk in thirty days in the sum of two Thousand Dollars with John P. Turner as Surety and the Defendant now prays that this Bill of exceptions may be signed and sealed by the Court and made a part of the Records in this cause which is done

(Signed) Isaac J. Wilson C.J.
Judge of the 13th Judicial Circuit.

State of Illinois, }
McHenry County } J. George H. Kassen
Clerk of the Circuit
Court in and for said County in the State
aforesaid do hereby certify that the

above foregoing is a true & complete
copy of the Record of this Court in
the above entitled cause as appears to us
by an examination thereof, with the
exception of the writ of summons
which by the most diligent search can
not be found in my Office.

In Witness whereof I have
hereunto set my hand and the
Seal of said Court at Woodstock
this 20th day of April A.D. 1858
G. H. Wagon Clerk.

Per \$6,50

~~574~~ 56
S. Goldsberg
G. & C. W. B. B. Co.

Transcript

Filed April 22, 1858
S. Leland
Clk

85/10

Galena Chicago Union
Rail Road Company

vs
Simon Goldburgh

} Supreme Court
} State of Illinois
} Northern Division

It is hereby stipulated
that the above cause be reversed at appellants
costs of this Court, each party paying their ^{own} costs in
the Court below

Dated September 20th A.D. 1868.

Union Spry

Atty for Goldburgh

E. Dick

Atty for Galena Chicago
Union R R Company

Superior Court
No 56
=

Galena Hefers
Union R R Campy
"

S Goldsborough
=

Stipulation
=

Filed April 28. 1879
Leland
Clerk

Salem & Chicago
Union Rail Road)
J. Goldberg - }

In Supreme Court
J. Grand Division

And now Comes the said J. Goldberg
Appellee in this Cause and says that
in the Record & proceeding in the Court
below there are no such errors as the
said Appellants have above set forth
~~of this~~ wherefore they pray that the
judgment below may be affirmed

Austin Sperry
J. A. Heath
for Appellee

In Supreme Court

Galena & Chicago
Union Railroad Co

vs } Bonds
 } ^{on} Error

Simon Goldberg