

No. 12477

Supreme Court of Illinois

Chicago, Burlington
& Quincy R.R. Co.

vs.

Parks

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United States of America
State of Illinois Set

Now before the Honorable
Isaac S. Wilson Judge of the 13th Judicial
circuit and presiding Judge of Kane
County circuit court, in the State of
Illinois at a term of said court
begun and held at the court house in
Yuba in said county on the ninth day
of February, in the year of our
Lord one thousand eight hundred and
fifty seven.

Present The Hon Isaac S. Wilson Judge
Edward S. Salzw. State's attorney
George C. Corwin Sheriff

Attend. Paul R. Wright
Club

And be it remembered that heretofore
to wit, on the 13th day of May, A.D. 1856 a
Process was filed with the clerk of said court
which is in the words and figures following
to wit:

Benjamin F. Parks

The Chicago, Burlington and
Quincy Rail Road company

Kane Co Cir court
August Term A.D. 1856
Cas - Damages \$2000.00

The clerk will please issue a summons
in the above entitled cause, returnable at
the first day of the next Term of this court.
Damages 2000, 00 — and oblige
B. B. Parks

And whereas on the same day, to wit the
13th day of May, AD 1856 a summons was
issued out of, and under the seal of said court,
which was in the words and figures following
to wit: —

State of Illinois The People of the State of Illinois
Kane County 8th to the Sheriff of said county
Greeting — We command you
that you summon The Chicago, Burlington
and Quincy Railroad company, if they shall
be found in your county, personally, to be and
appear before the circuit court of said county,
on the first day of the next Term thereof, to be
holden at the court house in Geneva in said
county, on the second Monday of August
next to answer unto Benjamin B. Parks
in a Plea of case, to the damage of said
plaintiff as he says in the sum of Two
thousand dollars. And have you then
and there this writ, with an endorsement
thereon, in what manner you shall have
executed the same.

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Seal of Court
Within Dea. on Clerk of our said
court and the said Sheriff at Geneva
in said county this 13th day of May AD 1856
Within Dea. on Clerk

upon which summons appears the following
endorsement or return, to wit:— Personally
Served by reading to E. S. Dixon Station agent,
also by leaving with said agent a true copy of
the within summons, this 13th day of May AD 1856,
and the Defendant not found in my county —
L. A. Barber Sheriff

And whereas afterwards to wit, on the 22nd
day of October AD 1856, a "Charr" was filed
with the clerk of said court, which was in
the words and figures following, to wit:—
Kane County Circuit Court.

Of the November, in the year of our
lord one thousand eight hundred and
fifty six:—

Kane County Is:

Benjamin O. Parks Plaintiff
vs this suit in his own proper person, complaining
of the Chicago, Burlington and Quincy Rail
Road company, defendants, duly summoned
as a plea of trespass on the case.

Now that whereas heretofore to wit, on the first

day of May AD 1856, at Aurora in the county
of Kane, the said defendants were proprietors of
a certain Rail Road passing through the town
of Aurora in said county, to and through the
Junction in the county of Dupage, and were the
proprietors of a certain train of passenger cars
upon said road, passing through and from
the town of Aurora, in the county of Kane,
to and through the town of Batavia in said
county, county, and to and through the Junction
in the county of Dupage, for the carriage and
conveyance therein of passengers for a certain
hire or reward, to wit, on the day and year, and
at the town of Aurora in said county aforesaid,
which said train of passenger cars, was then
and there under the care, government and
direction of a certain then servant of the
Chicago, Burlington and Quincy Railroad company
called a conductor who was then and there
conducting and managing the same in and
along the said Rail Road through and from
the said town of Aurora aforesaid, to and through
the said town of Batavia in said Kane county
and to and through the Junction in the county
of Dupage. And whereas also on the day and
year aforesaid, at the town of Aurora aforesaid
the said plaintiff was received in and upon said
train of cars as a passenger to be by the said

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Defendants then and there conveyed in along, and
upon said Rail Road and in and upon said
passenger train of cars from Aurora in said county
to the Junction in the county of DuPage, at and for
a certain fare and reward then and there to be paid
to the said defendants by the said Plaintiff.

Nevertheless the said defendants well knowing the
promises then and there by their said servant
said conductor of said train, wrongfully and unlaw-
fully, expelled and drove the said Plaintiff from
said passenger train of cars of said defendant as a
aforesaid running upon said Rail Road, and
then and there wrongfully, fraudulently and
unlawfully, refused to convey said Plaintiff
from Aurora aforesaid to said Junction in the
county of DuPage, to wit, on the day and year
and at Aurora in said county of Kane, by
means whereof the said Plaintiff was greatly
injured in his person then and there and was also
then and there otherwise greatly injured and
damaged. —

And also for that whereas heretofore to wit, on the
first day of May A.D. 1856, at Batavia in the
county of Kane, the said defendants were the
proprietors of a certain other rail Road passing
through and from the Town of Batavia in said
county of Kane to and through the Junction in the
county of DuPage, and were also then and there

proprietors of a certain other train of passenger cars, for the conveyance of passengers, for a certain fare and reward, passing and running through and from the said Town of Batavia in said county of Kau, to and through the Junction in the county of DuPage to wit in the day and year and at Batavia aforesaid. And which last mentioned train of passenger cars was then and there under the care, government and direction of a certain then servant of the said defendants, who was then and there conducting and managing said train of cars in and along the said Rail Road through and from the Town of Batavia in the county aforesaid, to and through the Junction in the county of DuPage. And whereas also on the day and year aforesaid, at the Town of Batavia aforesaid, the said Plaintiff was received as a passenger upon said train of cars, to be by the said defendants, conveyed in said train of cars along and upon said Rail Road, in and upon said train of cars from the said Town of Batavia to the Junction in the county of DuPage at and for a certain fare and reward, then and there to be paid by the said Plaintiff to the said Defendants. Yet the said defendants well knowing the premises, then and there by their said servant, who was then and there conducting and managing said train of cars as aforesaid, wrongfully,

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unlawfully, and forcibly then and there expelled
and put the said plaintiff off from said
passenger train of cars, and then and there and
then and there wrongfully, fraudulently and
unlawfully, refused to convey the said Plaintiff
from Batavia in said county of Kane to the
Junction in the county of DuPage by means
whereof the said plaintiff was then and there
greatly injured in his person, and was also
then and there otherwise greatly injured and
damaged.

And also for that whereas heretofore to wit,
on the first day of May, A.D. 1856 at Batavia in
the county of Kane the said defendants were
the proprietors of a certain Ohio Rail Road
leading through and from the town of Batavia
in Kane county to and through the Junction in
DuPage county, and were also then and there
the proprietors of a certain train of passenger
cars upon said Road, passing through and
from the town of Batavia in said county, to
and through the Junction in the county of DuPage
for the carriage therein of passengers, for a certain
hire or reward, to wit, on the day and year aforesaid
at Batavia in said county of Kane said which
said train of passenger cars was then and there
under the care, government and direction of a
certain then servant of the said Defendants,

who was then and there conducting, and managing
the same in and along said Rail Road, through
and from the said Town of Batavia, in Kane County
to the Junction in DuPage County. And whereas
also the said Plaintiff on the day and year and at
Batavia aforesaid was a passenger upon said
train of cars, to be by the said defendants then and
there conveyed from Batavia aforesaid to the
Junction in DuPage County - Yet the said
Defendants will knowing the Premises, wrongfully
unlawfully and forcibly by their said servant
who was then and there conducting and managing
said of cars aforesaid, then and there expelled
and put the said Plaintiff off said passenger
train of cars at a certain place in said
Town of Batavia in said County of Kane which
said last mentioned place was not one of
the usual stopping places, when the trains
of said defendants passing and running
upon said Road usually stopped, by means
whereof the said Plaintiff was greatly injured
in his person then and there and was then and
there otherwise greatly injured and damaged.

All to the Plaintiff's damage of Five
thousand Dollars, and therefore he brings
suit &c

B. A. Carter
in pro per

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And whereas afterwards to wit: on the 5th
day of January A.D. 1857 a Plea was filed with
the clerk of said court which was in the words
and figures following to wit:—
O B & O Co vs B. H. Parks & Kane & Co
Feb Term 1857

And the said defendants by Plato their
attorney come and defend the wrong &c and
say they are not guilty of the said several
supposed grievances in manner and form
as the said Plaintiff has thereto complained
against them &c of this they put themselves
upon the country &c W. H. Plato
atty for Defs.

And afterwards to wit, on the 13th day of
February, A.D. 1857, the same being one of
the days of the February Term of said court
the following, among other proceedings was
had and entered of Record, to wit:—

Benjamin H. Parks

v

Care.

The Chicago, Burlington &
Quincy Railroad Co

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This day comes the
Plaintiff by Day, Ferguson and
Herrington his attorneys, and the defendants by
Plato & Walker their attorneys also come, and
on motion of the Plaintiff it is ordered by the

court that a jury come, whereupon a jury come
a jury of good and lawful men to wit:

J. A. Wheeler, John Kelly - George White
Luther Hayes, Andrew McWayne, James Marks
Ashmun Ladd, J. M. Padelford, William Scott
Eber Chaffee, George S. Burr, John Andrews
being severally elected, tried and sworn also
come, and after hearing the evidence, argument
of counsel in part the court adjourned to meet
to morrow morning at 9 o'clock

And afterwards to wit, on the fourteenth
day of February AD 1857, it being one of the
days of the February Term of said court, the
following proceedings were had and entered
of Record, to wit:

Benjamin A. Park

v

Care.

Chicago, Burlington and

Quincy Rail Road Co

This day came
again the parties to this
suit, and the jury heretofore impaneled
having also come, and after hearing the
balance of the argument of counsel, and
the instructions of the court, retire under
an officer of the court to consider of
their verdict. Subsequently return into
court, and give a verdict upon their oaths

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say, that on the Jury find the defendant guilty
and assess the plaintiffs damages at the
sum of one thousand dollars - Whereupon
comes the defendant and moves for a
new trial.

And afterwards to wit, on the 14th
day of March, AD 1856, it being one of the
days of the February term of said court
the following, among other proceedings was
had and entered of Record, to wit:
Benjamin F. Parks

Chicago Burlington and
Quincy Rail Road Company

} Case -

This day come
the parties to this suit
by their respective attorneys, and the defendants
motion for a new trial heretofore entered
herein coming on to be heard, after argument
of counsel, the court being fully advised, overrule
said motion, to which decision of the court
in overruling said motion, the defendants
by their counsel except. It is therefore
considered by the court that the plaintiffs
have and recover from the said defendants
the sum of one thousand dollars damages
together with his costs in this behalf expended
and have execution therefor. Whereupon comes

the defendants by Plato their attorney and pray
an appeal to the Supreme Court of the State of
Illinois which is allowed by the court on
condition that they file a bond in the sum of
Two thousand dollars conditioned as required
by law within thirty days, with William
H. Hawkins as surety - and it is also ordered
that the time for filing Bill of exceptions herein
be extended thirty days.

And afterwards, to wit, on the sixteenth
day of March AD 1857 a 'Bill of exceptions'
was filed with the clerk of said court, which
is in the words and figures following to wit:-
Benj A Parks

Chicago Burlington & Luzerne Rail Road Co	{ New Circuit Term Jan 1857 Case.
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Be it remembered that on
the trial of this cause, the Plaintiff introduced
as witnesses the following named persons, to wit
A.B. Fuller who testified that one morning
during the last May Term of this court he
went on board the train at Aurora for the
purpose of coming to court - found the plaintiff
on board a little before seven o'clock a.m.
I paid my fare to Palavia - I let plaintiff
have fifty cents, he gave it to the conductor

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who gave him back twenty cents. When we got
to Batavia it rained, conductor said better
go on to the Junction - Montgomery stood on the
platform, we got onto go to the Junction - the
conductor came along collecting - got to plaintiff
who sat near the store, plaintiff handed him
twenty cents - the conductor said it was not
enough - Plaintiff said he had no more, would
pay another time. - some further conversation
passed between them, did not understand all
that was said - words passed backwards and
forwards - conductor told him he must pay
his fare or get off the train. - or that he would
have to get off. Parks said very well, if he put
him off, he would do so under protest. Witness
said he would pay the fare, did not offer it to
any one in particular - addressed myself to
Parks - It was from five to ten minutes from
time we left Batavia when train stopped -
the train had stopped, Parks said if he went off
he would have to put him off - the conductor
put his hand on Parks shoulder or arm and
they both walked out at the door together - heard
no further talk - It was a rainy morning
saw Parks standing on the ground in a low
wet place, between a half mile from Batavia.
saw Parks next at court, two or three hours after.
On cross examination witness said,

there was no bodily force or violence used by conductor. Parks talked no louder than usual, perhaps a little before they got through.

Was about ten feet from Parks - I paid twenty five cents fare from Batavia to the Junction - the Price of a ticket is twenty cents - fare from Aurora to Batavia is thirty cents if paid on the cars, a ticket is twenty ^{five} cents. - that had been the established rates, for some time. - I offered Parks the money to pay his fare, he said no, the matter had gone too far - he would not take the money. This was the Aurora accommodation train - it had freight and passenger cars. Did not notice how far we were from the depot particularly. - Thinks Mr Coffin of Batavia sat in the seat with Parks - some passengers got on at Batavia, ticket office near the cars - cars started soon after conductor suggested to go to Junction - it was raining quite hard.

On re-examination the witness said, I have been refused tickets on that road after the arrival of the train.

R. G. Montony testified I was on the train, Parks, Fuller and Hall were on. I was on the train when Parks and Fuller came in at Aurora, a little before seven, during the May Term, the usual time of train leaving. It was the accommodation train,

Chicago, Quincy & Burlington Rail Road for freight and passengers, we came on to Batavia, I had no conversation with conductor - I continued on to the Junction from Batavia - the conductor remarked as he was stepping on ^{to} the platform at Batavia - you had better go around by the Junction - he made the remark as I supposed because it was raining. He started immediately upon the conductor's making the remark. As the conductor was stepping on to the platform, I was in the doorway - Parks and Fuller on the platform, or about getting on, I was seated in the rear of the cars, on the left hand side. - the Plaintiff in the front part, facing the stove, on the right hand side. - the next time I noticed Plaintiff the conductor was standing by him, in the aisle - they had loud conversation, the conductor was Satterfield, he said to Plaintiff if he would not pay his fare he must get off - Parks said he would - the train was stopped - Satterfield said get off - Parks said no - if I get off, I go under protest, Parks got up, conductor put his arm hand on his arm or shoulder, they went to the door, Parks got off on the North side. Door was open and train had stopped - it had rained that morning, tracks back -

Plaintiff got off in a cut, fifty or eighty rods from Batavia Station, it was muddy and wet.

An drop examination witness said, there was no violence used - the conductor said if he wouldn't pay his fare he would have to get off or must get off, can't remember words. Think conductor used mild language, it was higher ground where Parks got off than at the Depot.

J. C. Moore testified, the first cut east of Batavia is between a fourth and a half mile from Batavia. Saw Plaintiff at court that day, about nine o'clock A. M. There is a living stable, at few rods from Depot at Batavia, The Rail Road company always charge five cents less for tickets than on the cars, - never had any difficulty in procuring tickets at the Depot the east end of the cut from one half to three fourths of a mile - It was quite rainy and muddy that morning.

J. L. Hanchett testified, I was the engineer that located the road from Batavia to the Junction - is five miles and six tenths - It is a little over seven miles from Aurora to Batavia - know of no regular stopping place between Batavia and the Junction - It does not exceed half a mile from the east end of the first cut to Batavia Station. - The second cut is forty rods beyond

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There is a farm road crossing track at the second cut about half a mile from Batavia.

On crop examination witness said it is a heavy up from Batavia to Immeton.

There is a road crossing at the West End of the first cut - cut is about twenty five or thirty rods long.

B. Mackey testified, I was one of the original incorporators of the Road. The company organized in 1849.

Charles Wheaton testified, don't know what the rules were about selling tickets. He never refused tickets after the arrival of the train, He has been refused both before and since the time of the occurrence in controversy.

E. S. Dixon is station agent at Batavia, was there on the morning mentioned - the train stopped two or fifteen minutes - conductor took on and left some cars. There is and was at that time a regular tariff of fare posted in the office at Batavia, we keep office open to sell tickets until the train is due. The first cut is forty or fifty rods from the station house.

On crop examination witness said I was ready to sell tickets that morning until the train left - frequently sell tickets after the regular time if not engaged in other duties. The Plaintiff here acted his case.

The Defendants then called as witnesses,
Alonzo Satterfield, who testified.

I have been conductor on this road about
two years, was conductor of the train that
morning, Plaintiff had rode on the cars
frequently before - had frequently collected fare
from him from Aurora to Junction. - Had
eight or ten freight cars on that morning. I
held in my hand a tariff of fares - this has been
the rates for eighteen months past - From Aurora
to Batavia fare paid on the cars is thirty cents,
from Batavia to the Junction was twenty five cents.
Plaintiff had frequently before that time frequently
paid fare from Aurora to Batavia, and had
objected to paying the five cents - This paper is
a conductor's tally sheet - it shows the distances
and fare. We were at Batavia that morning
about fifteen minutes, took on and left off
some cars. Mr Parks came on the cars at
Aurora and paid his fare thirty cents to
Batavia, he handed me two quarters - I gave
him back twenty cents. It was raining when
we left Aurora, the passenger car stopped at Batavia
at the door of the office - I left the cars and
attended to the switching - we were in a
hurry, our right on the road was freight
train tight - and we got away as soon
as we could. I stepped onto the cars after

11/9 they were in motion. I had taken two fares and two or three tickets, had taken fare of Mr Fuller before I came to Mr Parks. he sat next the stove, I entered at the forward end of the cars Mr Parks handed me two ten cent pieces, I told him that was not the fare - he said it was all the change he had, I told him the company furnished me change and I would change a bill, he asked what the fare was from Aurora to Junction. I told him. He said you have that amount. I said you are a passenger from Batavia to the Junction - and I must have or stand the five cents. He said you can do that, I then said if you have not money to pay your fare you had better get off - He said stop your train, and I will get off - I then stopped the train and said to him, the train has stopped Mr Parks. He said he should not go off unless he was put off. I said to him Mr Parks, you don't want me to throw you off do you? I told him I would walk to the door with him - I laid my hand on his shoulder and we went out together, He got off - I signalled the engineer to go on. No force was used, I laid my hand on his shoulder, and took it off - walked behind him to the door, the train was about forty rods from the Depot, going slow.

It is up grade, and a curve, had not got under much headway, before train was stopped. Mr Fuller told Parks he would pay his fare, Parks said he should not, when the train stopped, I am under the impression, the engine was just entering the first cut.

An crop examination witness said, I have been in the employ of the company two years. The first crossing is west of the cut, we were not up to the grove - we stopped at the first crossing, it was a rainy morning - Montony and Fuller were on board, don't recollect saying anything to either of them - Did not tell Parks I should put him off. Mr Coffin testified - I was on the train at the time, in the last, was on seat with Mr Parks, next the stove. - The conductor came along, Parks offered him twenty cents, conductor said not enough, five cents more. Parks said he had paid the extra five cents once, conductor said the fare from Bataine to the junction was twenty five cents - Parks said that was all he had - and he must take that or trust him. - The conductor said if you cant or wont pay your fare, you had better get off Parks said, stop your train and I will get off. The conductor then went forward, and stopped the train.

When the train had stopped, Parks got up and stood in the baggage way - the conductor said, Mr Parks the train has stopped - Parks said he should not get off, unless put off. Mr Fuller offered to pay the fare, but Parks refused to let him - and said he went off under protest. The idea was there must be force enough to show he went off unwillingly. They then went out together, as far as the door, conductor asked Parks if he wanted him to throw him off - conductor said he must get off.

Richard Nixon testified - that he was the engineer at the time - in charge of the locomotive - the train was stopped, 40 or 50 Rods from Bataria. - Then engine was standing at a road crossing when it stopped for Plaintiff to get off - The train stood at Bataria from twelve to fifteen minutes - cannot remember how long it stopped there the next time - He was a little behind time that morning.

Nelson Deunison testified - I was baggage man, on the train, we were some fifty rods from station when Mr Parks got off.

William C. Hawkins testified - that he had been in employ of defendants some three years the tariff of fare now exhibited has been the rates of fare, since October 1855 - copies of this have been posted up at all the Stations -

There was one up at Aurora - and Batavia
in May last.

The defendant then introduced as evidence
the following printed paper, spoken of by the
witnesses, here attached. The foregoing is all
the testimony given in the case.

The Plaintiff asked the court to instruct
the Jury as follows:-

If the Jury, believe from the evidence, that the
Plaintiff has established his right to recover -
in estimating the damages the Jury, have
a right to take into the consideration, all the
facts and circumstances of the case, the actual
damages, if any, incident to the putting
Plaintiff off the train - The bodily pain and
suffering, if any - anguish of mind and public
disgrace. But they will not give vindictive
damages beyond compensation, unless they
believe from the evidence, the defendant acted
maliciously.

If the Jury, believe from the evidence,
that the conductor of the train of cars at the
time in question caused the Plaintiff against
his consent to get off the train, at a place
which was not a usual stopping place
for the defendant's train of cars, the Plaintiff
is entitled to recover - and the Jury should
assess his damages.

CHICAGO, BURLINGTON & QUINCY, CENTRAL MILITARY TRACT, AND PEORIA & OQUAWKA RAILROADS.
KNOWN AS THE CHICAGO & BURLINGTON RAILROAD LINE.

				BURLINGTON.	QUAKWA JUN.	LINDEN.	MONMOUTH.	CAMERON.	GALESBURG.	WATAGA.	ALTONA.	GALVY.	KEWANEE.	NEPONSET.	BUDA.	WYANET.	PRINCETON.	DOVER.	ARLINGTON.	MENDOTA.	EARL.	WAVERLY.	SOMONAUK.	NEWARK.	PLANO.	BRISTOL.	OSWEGO.	MONTGOMERY.	WEST AURORA.	AURORA.	BATAVIA.	JUNCTION.	
C. B. & Q.	210		CHICAGO,.....	605	605	580	555	535	505	485	460	440	415	390	370	355	330	315	295	270	240	220	200	190	175	160	150	140	135	135	115	95	
	180	2	30 JUNCTION,.....	545	520	490	470	445	420	395	370	350	325	300	280	265	240	225	205	180	150	130	110	100	90	70	60	55	50	45	25		
	174	6	36 BATAVIA,.....	525	500	470	450	425	400	375	350	330	305	280	260	245	220	205	185	160	130	110	90	80	70	50	40	35	30	30			
	167	7	43 AURORA,.....	505	480	450	430	405	380	355	330	310	285	260	240	225	200	185	165	140	110	90	70	60	45	30	20	15	15				
	166	1	44 WEST AURORA,..	505	480	450	430	405	380	355	330	310	285	260	240	225	200	185	165	140	110	90	70	60	45	30	20	15					
	165	1	45 MONTGOMERY,...	500	475	445	425	400	375	350	325	305	280	255	235	220	195	180	160	135	105	85	65	55	40	25	15						
	163	2	47 OSWEGO,.....	495	470	440	420	395	370	345	320	300	275	250	230	215	190	175	155	130	95	80	60	50	35	15							
	159	4	51 BRISTOL,.....	480	455	425	405	380	355	330	305	285	260	235	215	200	175	160	140	115	85	65	45	35	25								
	153	6	57 PLANO,.....	465	440	410	390	365	340	315	290	270	245	220	200	185	160	145	125	100	65	50	30	20									
	149	4	61 NEWARK,.....	450	425	395	375	350	325	300	275	255	230	205	185	170	145	130	110	85	55	35	15										
C. M. T.	146	3	64 SOMONAUK,.....	440	415	385	365	340	315	290	265	245	220	195	175	160	135	120	100	75	45	25											
	139	7	71 WAVERLY,.....	420	395	365	345	320	295	270	245	225	200	175	155	140	115	100	80	55	25												
	133	6	77 EARL,.....	405	380	350	330	305	280	255	230	210	185	160	140	125	100	85	65	40													
	122	11	88 MENDOTA,.....	370	345	315	295	270	245	220	195	175	150	125	105	90	65	50	30														
	113	9	97 ARLINGTON,																														

Notice to Passengers.

A deduction of Five Cents will be made from the above Rates, when Tickets are Purchased before entering the Cars.

C. G. HAMMOND,
Superintendent.

CHAS. E. FOLLETT,
General Ticket Agent.

It is not necessary, in order to enable the plaintiff to recover, to prove that the conductor used actual physical violence to put the Plaintiff off the train — If the Jury believe from the evidence that the conductor wrongfully required and caused the Plaintiff to get off the train.

If the Jury believe from the evidence that the Plaintiff tendered to the conductor all that was required by the published tariffs of fare of the defendant, and the conductor refused to receive the same, but caused the plaintiff again, in his will, to leave and get off the train of cars, the plaintiff is entitled to recover.

Which was done, to the giving of which said instructions by the court, the defendants by their counsel, at the time excepted.

The defendants then asked the court to give the Jury the following instructions:

If the Jury believe from the evidence that the plaintiff, on refusing to pay his fare told the conductor to stop the train, and let him get off, and the conductor thereupon stopped the train, and the plaintiff thereupon got off without any objection, as to the place of stopping, then the Jury should find for the defendants.

If prior to the alleged grievance

the defendants had filed and established the rate of fare from Batavia in Kane County, to the Junction in Dupage County, at twenty five cents, and the plaintiff knew the fact and refused to pay that amount of fare when requested so to do, by the conductor, immediately upon the starting of the train from Batavia, and that because of such refusal, the conductor immediately stopped the train, and lightly laid his hand on the shoulder of the plaintiff and requested him to leave the cars, that the plaintiff refused hereupon left the train, the law of the case is with the defendants, and the Jury will find for the defendants, unless they shall find that the conductor used unnecessary force.

If the Jury shall find that the defendants had, prior to the time of the alleged grievance, established and filed a price of fare from Batavia in Kane County, to the Junction in Dupage County, that the plaintiff refused to pay, such fare when requested, to do so by the conductor, the agent of the defendants, that plaintiff was told by the conductor, that if he would not pay, his fare he had better get off the train. And that plaintiff thereupon proposed or stated to the conductor that if he would stop the train he would get off.

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That the conductor thereupon did stop the train, and that the plaintiff then stated to the conductor that he wanted him to put him off. And that the conductor thereupon gently put his hand on the shoulder of the plaintiff who immediately thereupon walked out of the cars, and left the train, they will find for the defendants unless the Jury shall find that the conductor used unnecessary force.

If the Jury shall find that immediately upon the starting of the train from Bataria, the conductor requested the plaintiff to pay the fare from Bataria to the Junction, as established by the defendants, that the plaintiff refused to pay the same, then there was no contract or undertaking on the part of the Defendants, to carry the Plaintiff to the Junction, or upon their Road. And it was not the duty of the defendant to do so. And the plaintiff therefore cannot recover unless the Jury shall find that the conductor used more force than was necessary, in putting the plaintiff off their train.

If the Jury believe from the evidence that the plaintiff on refusing to pay his fare, told the conductor, that if he would stop the train he would get off - That the conductor ^{did} thereupon

stop the train, the objection that it was not at a usual stopping place, cannot be made.

The plaintiff having selected his own place for getting off and if no unnecessary force was used by the conductor the jury should find for the defendants.

Which was refused by the court, to which decision of the court in refusing, said instructions, the defendants by their counsel at the time excepted.

The defendants also asked the court to give the jury the following instructions, which the court refused to give as asked, but gave the same as modified by the court.

The defendants have the right under their Charter to establish such rates of fare or toll for the transportation over their road of passengers as they may deem suitable to their interests - And are not limited in their exercise of such right and powers by any subsequent law. The defendants have also the right and power under their Charter to adopt such reasonable rules and regulations as they may deem expedient or necessary, for the collection of fare or toll fixed and established by them. And if the jury believe that the rule authorizing, and directing, their conductors to put persons

of their trains when they refuse to pay fare, is not an unreasonable rule, when the Jury will find for the defendants, unless they believe that the conductor used unnecessary force in putting plaintiff off the train - or that he was put off at an improper place under all the circumstances - (Modification by the court -

"But if the conductor put the Plaintiff off the cars at any other place than a usual stopping place, on account of his refusal to pay fare, it was an improper place.")

At and previous to the time of the alleged grievance, the defendants had power and authority and power, to fix and establish the amount of fare, to be paid by passengers, passing over their road from Aurora to the Junction, and from Batavia to the Junction.

and upon the refusal to pay such fare by a passenger, they were authorized to put such passenger off the train. (*at any of their usual stopping places) using no unnecessary force. and if the Jury shall find that the defendants had established the amount of fare to be paid by a passenger from Batavia to the Junction - that the Plaintiff refused to pay such fare, then the defendant by its conductors had the right to put the Plaintiff off their train. - and they will find for the defendant, unless they shall

* Court's modification
inserted in
Brackets)

found that the conductor used unnecessary force
(*or put the plaintiff off at a place not a usual
stopping place*) (*conts modifications in Brackets*)

As to which decision of the court
in refusing, said instructions as asked, and
giving them as modified, the defendants by
their counsel at the time accepted.

The defendants also asked the court to give
the Jury the following instructions.

If the Jury believe from the evidence that the
Plaintiffs object in refusing to pay the usual fare
on that occasion was to create a quarrel, or
controversy with the conductor, or to procure
a cause of action or produce litigation between
himself and the Defendants, or said conductor,
then the Jury should find for the Defendants.

Which was done by the court. The court also
allowed the Jury to take with them, in their
retirement, the instructions asked by the
defendant and marked refused by the court.
to which ruling and decision of the court in
allowing the Jury to take with them in their
retirement said instructions marked refused
the defendants by their counsel at the time
accepted. The Jury rendered a
verdict for the plaintiff for one thousand
dollars. The Defendants moved the court
to set aside the verdict and grant the

Defendants a new trial for the following reasons

The verdict of the jury is contrary to the evidence

The verdict of the jury is contrary to the law

The court erred in giving the instructions asked by Plaintiff.

The court erred in refusing the instructions asked by Defendants.

The court erred in qualifying the Defendants instructions as given.

The court erred in allowing the jury to take into consideration the Defendants instructions made refused.

Which motion the court overruled and rendered a judgment on said verdict, & which decision of the court in overruling said motion by the defendants, the defendants by their counsel at the time excepted. And pray that their Bill of Exceptions may be signed &c, which is done.

Francis E. Wilson (Sd)

And afterwards, to wit, on the Twenty third day of March A.D. 1857, an affidavit was filed with the Clerk of said court, which is in the words and figures following, to wit:—

Know all men by these presents that we the Chicago, Burlington, and Quincy Railroad company and William H. Hawkins as surety are held and firmly bound unto Benjamin F. Parks in the Penal sum of two thousand dollars for the faithful payment of which sum well and truly to be made we

bind ourselves, our heirs, executors, and
administrators jointly severally, and firmly
by these presents. — Sealed with our seals
and dated this eighteenth day of March A.D. 1857.

The condition of the above obligation
is such that whereas the said Benjamin A. Parks
did at the February Term A.D. 1857 of the same
county circuit court recover a judgment
against the said Rail Road company for the
sum of one thousand dollars and costs,
from which said judgment the said Rail Road
company has taken an appeal to the supreme
court of the State of Illinois, and if the said
Rail Road company shall prosecute their
said appeal with effect, and shall pay
said judgment, costs, interest and damages
in case said judgment shall be affirmed, then the
above obligation to be void — otherwise to remain
in full force and effect.

In testimony whereof the common
Seal of said corporation is hereunto
affixed this 18th day of March A.D. 1857.

Amos A. Hall

Secretary

H. H. Hawking S. Secy

State of Illinois
Kane County

I Paul R. Wright
Clerk of the Kane County
circuit court in the State aforesaid, do hereby
certify that the above and foregoing is a
true and complete copy of the following papers
as filed in the above entitled case in my
office, viz: - "Process", "Summons" with Sheriff's
endorsement thereon, "Arr" "Plea", "Bill of
Exceptions" and "Appra Bond" - And also
of all the orders entered of Record in said
cause, as appears from the Records and files
in my office.

Witness, Paul R. Wright, Clerk of
said court and the Seal thereof at
Geneva this 14th day of April A.D. 1857

P. R. Wright

Clerk



I am Co. Cir Court

Benjamin F. Park

v

Chicago, Burlington
& Quincy Railroad Co

Transcript



Ledyard & Walker

Aug 8.

State of Illinois }
Supreme Court } Of the April Term A.D. 1857

The Chicago Burlington
Quincy Rail Road Company
Appellant

vs
Benjamin F. Parks
Appellee

Afterwards, to wit: on the twenty first day of April in the same Term, before the Judges of the Supreme Court of the State of Illinois at the Supreme Court Room in Ottawa in said State, comes the Chicago Burlington & Quincy Rail Road Company by Sedgwick & Walker its Attorneys and says that in the Record and proceedings aforesaid there is manifest error in this to wit:

1st That the said Circuit Court erred on the trial in the Court below in giving the said several instructions asked by the Plaintiff

2^d That the said Circuit Court erred on the trial in the Court below in refusing to give the said several instructions, modified by the Court, as asked by the defendant, and in modifying the same, and giving them to the jury as modified

3rd That the said Circuit Court erred in the trial of said case in the Court below in refusing the said several instructions asked by the defendant

4th The said Circuit Court erred on the trial of said cause in the Court below in permitting the jury to take with them ^{in their retirement} to their room the instructions refused and marked "refused" by said Court

5th The said Court erred in overruling the said Motion of said defendant below for a new trial

6th There is error in this, to wit: That said judgment and verdict is against the evidence in the case

7th There is error in this, to wit: That by the Record aforesaid it appears that the verdict and judgment aforesaid were given for the said appellee and against the said appellant, when by the Law of the land, the verdict and judgment ought to have been given for the appellant and against the said appellee

And the said Appellant prays that the judgment aforesaid ~~and all other~~ ^{for the} errors in the Record and proceedings aforesaid may be reversed annulled and for naught held and that the said appellant may be restored to all things which he has lost by occasion of said errors and of the judgment aforesaid

Sedgwick Walker
Atty for Appellant

And now comes the said
appellee by ^{Day Leland} Wallace and
say that there is no ^{such} error
in the record of the proceedings
aforesaid as the said
appellant has above assigned
and ^{that} the said appellee prays
may be awarded of by the court & that
the court ~~to~~ dismiss said
appeal and affirm of said
judgment &c

Day Leland  Wallace
of counsel for appellee.

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Supreme Court

C. B. & Dumas & Co

B. F. Parks

Rec'd & rec'd
assignment of errors

Filed April 22 1859
L. Leland
Clerk

Sedgwick Walker
Att'y for Appellants

Supreme Court
3rd Grand Division } Of the April Term A.D. 1857

The Chicago, Burlington &
Quincy Rail Road Company
Appellant

vs
Benjamin F. Parks
Appellee

Appeal from Kane

This is an action brought by the present defendant in the Court below against the present plaintiff as a common carrier for an alleged refusal to carry the plaintiff therein from Batavia in Kane County to the Junction in Du Page County, and for an alleged violation of its duty in requiring the plaintiff to get off its cars.

The material facts appearing from the record, are briefly as follows:

The defendant on the first of May 1856 was proprietor of a Rail Road from Aurora to the Junction, passing through Batavia. The plaintiff below got into the cars at Aurora and paid the regular and established fare

to Batavia with the intention of leaving the cars at that place, and he did in fact get off the cars at Batavia. At Batavia he changed his mind and concluded to go on to the Junction and stepped into the cars for that purpose.

Immediately upon the starting of the train from Batavia, Saterfield the Conductor of the train asked the plaintiff for his fare. The plaintiff offered him 20 cents; thus the conductor refused to take and demanded 25 cents, the established fare from Batavia to the Junction, as shown by the published tariff given in evidence, which fare the plaintiff refused to pay. The Conductor then told the plaintiff, if he would not pay his fare he had better get off, to which the plaintiff replied "Stop your train and I will get off" The conductor thereupon stopped the train and the plaintiff walked out of the car and left the train, stating however, that he did so under protest. It was also proved that the rate of fare had been established since October 1855, and that the plaintiff had repeatedly passed over the road. That the place where the plaintiff got off was some fifty rods from the depot of the Company at Batavia. No force was used nor does there appear to have been any harsh words, or ungentlemanly or improper conduct

on the part of the conductor or the other agents of the defendant

Upon this record it is alleged that the Court erred in giving the instructions asked by the plaintiff below, and in refusing the instructions asked by the defendant

In the first place then we say, that the Company was authorized by its Charter, to fix the amount of fare to be paid by persons passing over its road, at such rates as it should deem most conducive to its interests.

See Sec. 6 of the Charter of the Coa approved Feb'y. 12th 1849 ~ *Cheng v. Boston & Maine R.R.* 11 Met. 121. Nor is the company limited in the exercise of this right by any prior or subsequent Statute.

The Company have also the right to make a deduction of five cents. from the established fare if a passenger will purchase his ticket at its depot, and before taking his seat on the cars

This authority to fix and establish the rate of tolls as shown by Sec. 6 of the Charter above cited, as necessarily includes the power, and confers the right to make such deduction, as the greater includes the less

Again, the railroad company has the

right by its Charter, and the powers conferred as incident thereto, to adopt such reasonable rules and regulations, for the collection of fare as it should deem best, and the rule requiring a passenger to leave the cars, and give up his seat on the refusal to pay his fare, is not an unreasonable one, and is clearly within the powers of the appellant as a corporation and a common carrier.

Commonwealth v. Power T. Metc., 596

Sinks v. Coleman 2. Sum. 224

The Rail Road Company is not bound to carry a passenger unless the fare be either paid or tendered

The Company may in such a case either refuse to permit a passenger to get into its cars, or having entered therein, upon refusal to pay his fare, may require him to get off, and may remove him therefrom at any time before the termination of the journey, at any suitable place, using no unnecessary force. - 22 Barb. 133

It is clearly a matter of contract between the Company and the passenger, and it is because of the fare or reward paid by the passenger and received by the company, that, on the one hand entitles the passenger to a seat and the rights and privileges of a passenger

and on the other imposes upon the Company
onerous duties, and the rigid rules of the
common law relating to carriers, to carry the
passenger safely to the termination of the route.

When, therefore, the plaintiff below refused
to pay his fare when requested to do so by the
conductor, he had no longer the rights of a
passenger, and was not entitled to a seat in
the cars of the defendant. And the conductor
as the agent of the Company, had full author-
ity, and was justified in requiring the plaintiff
to leave the cars, and might have removed him
therefrom at any suitable place using no more
force than was necessary for that purpose

State v. Overton, 4 Lebraskie Rep. 435

Sinks v. Coleman 2 Sumner " 221

Commonwealth v. Power & al., 7. Metc. - 396

Cherry v. Boston R. R. Co. 11 " " 121

Angell on Carriers Sec. - - - 609

Story on Bailments " - - - 603

§ 22 Barb. 133. & 4 Cush. 608

From what has been said, and from the
principles established by these authorities
already cited, it follows that upon the refusal
of the plaintiff below to pay the 25 cents
the established fare from Batavia to the Junction
the Company had the right to require the
plaintiff to leave the cars, and upon his refu-

sal to do so. It was the duty of the conductor, acting as the agent of the defendant to remove the plaintiff at a suitable place, using no more force than was necessary for that purpose.

And if we are not mistaken in the view we have taken of the law applicable to the facts of this case, the Court below for the reasons already stated erred in giving the 2^d instruction asked by the plaintiff below and in refusing to give the instruction asked by the appellant.

But it is said the Company had not the right to put the plaintiff off at any other than a usual stopping place, and that Sec. 34 of an Act to provide for a general system of Rail Road incorporations, ^{approved Nov. 15th 1849} is a limitation upon our rights at the Common law.

This Section reads as follows:

If any passenger shall refuse to pay his fare or toll it shall and may be lawful for the conductor of the train and the servants of the corporation to put him out of the cars at any usual stopping place the conductor shall select.

This statute, if applicable to the appellant, takes away, and greatly impairs rights expressly granted by its Charter, and rights which the appellant had as incident and necessary

to it to carry out the object and intent of its Charter. It takes away the only efficient means by which the Company can enforce the payment of fare by passengers passing over its road. If a passenger can not be put off for the non-payment of fare, except at a usual stopping place, then a party going only from one station to another, need never pay his fare. It is impossible for the Company after leaving a depot, to return for the purpose of putting off a passenger who may have refused to pay fare. The Company is obliged to make time. It is a duty they owe to the passenger and to the public and it is liable if it fails to do so without good excuse; and if a person cannot be removed except at a usual stopping place, for the refusal to pay fare, the Company is of course compelled to carry him to the next station and so one disposed to be dishonest may travel the length of any road without the payment of a cent, and the Company is ^{not only} powerless in the premises, ~~but~~ the property of the Company, held under and by virtue of its Charter is thus made of no value.

To give that Statute such a construction would be to defeat the very object and intent of the Charter, and violate principles of

law, relating to common carriers too long and too well established to be now questioned.

It would be in effect holding that the company are obliged to carry passengers without reward, a requirement not within the power or the meaning of the Legislature.

It would in effect be saying that a person upon the cars of the defendant, without payment of fare, without the assent, express or implied, of the Company, against its will, its rules and regulations, is not a trespasser, but that he has not only the power, but the right to remain there, and dictate to the Company, how and in what manner it shall use its property.

Such a construction will not be given to this section if it can be avoided, nor is such the necessary construction.

This section so far as it goes, is an affirmative statute and simply declaratory of the common law, and does not nor was it designed, to take away any of the rights possessed by the Company under its Charter, or at the common law.

Dwarris on Statutes. 637. 638. 639.

But again, this Statute is an affirmative permissive statute, and was passed for the benefit of the company. The public have no interest in having the power granted

by this Statute, put into execution. It is quite immaterial to third persons, whether the Company ever put a passenger off the Cars for the non payment of fare. And neither the public or third persons have a claim de jure, that this power should be exercised.

The phrase, therefore, contained in this section. "It shall and may be lawful" is merely permissive to, and not imperative upon the Company.

The County of Schuyler v. The County of Mercer, 4 Gill, 20
Krobergh Pumping Co. v. Miller. 4 John. Ch. R. 112,
Malcom & Rogers - - 5 Cow. 189

Nor is this Statute a mere police regulation and so within the rule of the *Chicago & Galena Rail Road Company v. Lewis*, 13 Ill. 548.

It is more. It takes away real and vested rights guaranteed to the Company by its Charter.

The section referred to in the general Rail Road Law therefore, does not apply to the defendant; but if the Legislature designed it to apply to the appellant, it was not designed, nor does it take away or at all impair any of the rights, privileges or remedies which it had at the common law.

This brings us to the next point we design to make in this argument.

2nd But suppose that Sec. 34 of the General Rail Road Law does apply to the appellants, and that it prohibits it from putting a person off the train for the non-payment of fare except at a usual stopping place: Still we say that the Court erred in refusing to give several of the instructions asked by the Counsel for the Company.

The Court was requested in the first and fifth instructions, to charge the jury in substance that if the plaintiff below when requested to leave the cars, consented and agreed to get off at the place he did, he cannot now object, that it was not at a usual stopping place, and recover on that ground.

When the appellee refused to pay his fare on request of the conductor, there was an end of any contract between the parties and the plaintiff had no longer any right to a place on the cars. This is certainly the Law and both parties so understood their rights at the time as appears from the record: for the plaintiff below, when told by the conductor that he had better get off if he would not pay his fare, says in substance 'this is true and if you will stop your brain

I will get off.' The conductor immediately complied with this proposition and the plaintiff left the train.

Here then the Appellee consented and deliberately agreed to get off the car at the time and place he did, and having done so he could not afterwards, turn round and object that it was not a usual stopping place, upon the well known principle of law that no man can maintain an action for a wrong when he has consented or contributed to the act which occasions his loss.

Gould v Oliver 2^d Scott N.P. 257-264

Broomes Legal Maxims 127

The Court therefore erred in refusing to give the 1st and 5th instructions asked by the defendant below.

Again the Court erred in refusing to give the 6th instruction as asked by the appellant and in giving the same as modified for reasons already stated: and for the additional reason that it does not necessarily follow that the place where the plaintiff below left the train was an improper one, merely because it was not an usual stopping place.

For if the plaintiff below consented and agreed to get off at the place he did, or had

the place been the house of the Plaintiff or had the usual stopping place been inaccessible, and the Plaintiff got off a few rods distant but as near as practicable, then and in ~~that~~ ^{in then} case, the place would not have been an improper one

And beside, the Court undertook, by the modification made by him, to determine upon a question of fact, which belonged exclusively to the jury, to wit, whether the place was not a proper one under all the facts and circumstances of the case

Again here was a substantial compliance with the provisions of said Section 34

The conductor immediately upon the starting of the train demanded the fare, and upon refusal to pay, and at the suggestion of the Plaintiff below, the train was stopped at once, and within fifty rods of the depot at Batavia

Now although it was not directly opposite the passenger house and so within the letter of the statute, it was within a very few rods of the depot grounds, and sufficiently near to be a compliance with the spirit of the statute even in case this Court should be of opinion that it applied to the appellant, and that its provisions are imperative

The Court below ought therefore to have granted a new trial, for the verdict was clearly against the evidence in the case.

In the last place we say that the verdict in this case of \$1000. is not sustained by the facts of the case, nor by Law, nor by common sense.

It is not merely excessive, it is enormous and an outrage upon every principle of Law, and Justice.

In this case, the right at all events and in any view of the case was with the appellant.

There was no malice, no moral wrong, no attempt on the part of the defendant below or its servants to injure, to insult or to disgrace the plaintiff, or to interfere with, or to violate any of his rights.

We claim, of course, that the appellant has in no sense violated the Law, and is guilty of no wrong or neglect of duty. But in any view that can be taken of this case by the Court, there was ~~but~~ a technical violation of the letter of the Law without fraud, malice, gross negligence, or oppression of any kind.

The jury therefore were not authorized to give, and could not give, under the Law and the facts of this case, either verdict.

or & employ damages

The jury was confined, in giving its verdict, to making the plaintiff below a compensation for the damages sustained, and this would include:

- 1st Actual pecuniary damage, if any; but there was not such damage or loss, alleged, proved or claimed
- 2^d The actual expenses incurred in obtaining redress, by which is meant, simply the costs of suit;— as this is not one of those cases where damages are to be allowed for counsel fees

Mr. Sedgwick expressly says in his work on damages that "As a general rule the Law takes no notice whatever of the motives of the defaulting party, and whether the engagement be broken through inability or design, the amount of remuneration is the same, and that in these cases, as well as those of tort or breach of duty of any kind, where there is no complaint of fraud malice, or wilful negligence" only those grounds of loss which we have mentioned above are taken into consideration, and the latter but imperfectly

Sedgwick on Damages. 35. 36. 37. & 38

do. 453 ~ 1 Labriskie (N.C.) R. 183

The verdict in this case is a clear violation of these rules. The jury went beyond the rule which authorized them to make the plaintiff compensation, or rather entirely disregarded that rule, and have given a verdict of punitive or exemplary damages, quite unparalleled in the history of jury trials.

It is conceded in this case that there was no fraud, no violence, no malice, no gross neglect of duty, and no attempt at oppression on the part of the appellant - No pecuniary loss - no loss of time to exceed two or three hours at most on the part of the appella

And yet in this very case where in the transaction the appellee is much more chargeable with wrong and intended fraud and injustice, than the appellant; where the conduct of the appellant was not only legal but just, and justifiable in every respect except it may be (and this we deny) in putting the plaintiff below, off at a place 30 or 40 rods distant from the place where by Sec. 34, above referred to, he should have been put off, the jury have given a verdict of one thousand dollars, and in violation, as we think of every principle of Law and justice, and ought not to be sustained

With these suggestions we submit the
case to your Honors

A. M. Walker
of Counsel for Appellant

Supreme Court - 3^d Division

The Chicago Burlington
& Quincy Rail Road Co
No 147 Appellant

vs
Benjamin F. Parks
Appellee.

Proof of General
for Appellant

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Chicago, Burlington
& Quincy R.R. Company

Benjamin H. Parks

Commission

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