

hands of the national government, rivalries and jealousies would arise among the states similar to those which had existed under the old confederation, which would lead practically to the destruction of interstate commerce, and it was regarded as specially important that no power in the legislature of any one state to interfere with commerce or trade in any other state should be recognized as existing.

My conclusion is, therefore, that the statute in question, if held to apply to interstate commerce, is in violation of the constitution of the United States. In this view I am supported by the recent decision of the supreme court of this state, (*Carton v. Ill. Cent. R. Co., supra*), in which the act now under consideration was held to be unconstitutional. If I were in doubt upon the subject, I should not hesitate to follow that ruling.

I am not aware that the federal courts have ever in the course of our history undertaken to enforce a state statute which has been held void by the supreme judicial authority of the state. I should hesitate long before undertaking to enforce in this tribunal any act of the state legislature which the supreme court of the state has held, for any reason, to be null and void. To do so would be to give to suitors who can come here an unjust advantage over the citizens of the state who are compelled to submit their rights to the determination of the state courts.

The demurrer to the answer is overruled.

See *The Head-money Cases*, ante, 135, and note, 142; *Memphis & L. R. R. Co. v. Nolan*, 14 FED. REP. 532, and note, 534.

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## GOULD v. CHICAGO, M. & ST. P. R. CO.

(Circuit Court, D. Minnesota. June Term, 1883.)

### EJECTION OF PASSENGER FROM TRAIN.

A person on a train refusing to produce a ticket or pay his fare, subsequently changing his mind, and tendering full fare, would be entitled to continue his journey on the train. But if the refusal be accompanied by violent and abusive conduct, whereby the conductor is compelled to stop the train for the purpose of putting him off, he may forfeit such right to remain on the train, and the conductor, using proper discretion, may eject such person, notwithstanding tender of full fare is then made.

At Law.

The plaintiff, Gould, was ejected from the cars of defendant's railway at Union Park, a regular passenger station between Minneapolis and St. Paul. He claimed that he purchased a ticket and boarded the train at the passenger depot in Minneapolis, and, on request, surrendered his ticket to the conductor, who subsequently demanded his fare, and on refusal of payment put him off.

The testimony was contradictory upon all the material facts. The plaintiff testified that when the conductor stopped the train at Union Park station and commenced to put him off, he offered the price of a ticket. The evidence on the part of the defendant was to the effect that the plaintiff boarded the train after it left Minneapolis, and when requested by the conductor to give up his ticket, declared that he had already done so, and upon a denial thereof by the conductor, and a further request for his ticket or his fare, refused to deliver up either, became abusive and violent, and that thereupon the conductor put him off the train.

*C. K. Davis and J. N. Granger, for plaintiff.*

*Bigelow, Flandrau & Squires, for defendant.*

NELSON, J., after a statement of the matters at issue, and calling the attention of the jury to the law defining the rights of the public and the duties of railroad companies, *inter alia*, charged the jury that unless a person unlawfully on the train had, by his improper conduct, compelled the conductor to stop it for the purpose of putting him off, and persisted in his refusal to pay fare from the place where he boarded the train, and became violent and abusive, until the conductor had to resort to extreme measures,—as, for instance, by force pull him from his seat,—he might change his mind, and if full fare was tendered the conductor was bound to receive it; and if he put him off after such tender the railway company is liable.

The jury found a verdict for the defendant.

See *Hall v. Memphis & C. R. Co.* 15 FED. REP. 57, and note, 69.

### BROCKETT v. NEW JERSEY STEAM-BOAT CO.

(Circuit Court, N. D. New York. 1883.)

**1. NEGLIGENCE—INJURY TO PASSENGER—QUESTION FOR JURY.**

Where there is, upon the main issue, a disputed question of fact, it cannot be properly withdrawn from the consideration of the jury, and it would be error for the court in such case to direct a verdict.

**2. SAME—EVIDENCE—CHARACTER OF WITNESS.**

Questions affecting the character of a witness are not incompetent, and may be properly allowed on cross-examination.

**3. SAME—RES GESTÆ.**

In an action arising out of an altercation on ship-board, testimony as to what was said by any officer of the vessel during the altercation *held* admissible as part of the *res gestæ*.

**4. SAME—EVIDENCE—REFUSAL TO STRIKE OUT, WHEN NOT ERROR.**

It is a well-settled rule that a refusal by the court to strike out evidence which was not objected to when offered is not error.

This action was tried at the last January circuit, and resulted in a verdict of \$5,500 for the plaintiff. The plaintiff was a deck passen-

<sup>1</sup>Affirmed. See 7 Sup. Ct. Rep. 1039.