

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Where there is, upon the main issue, a disputed question of fact, it cannot be properly withdrawn from the consideration of the jury, and it would be error for the court in such case to direct a verdict.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

¹Affirmed. See 7 Sup. Ct. Rep. 1039.

ger on one of the defendant's boats from Albany to New York. He was asleep on the freight, abaft the shaft, at a point where the rules did not permit him to be. He was pulled from this position by the company's watchman, and in falling received very serious injuries. The question submitted to the jury was whether more force than was necessary was used in removing him. The plaintiff and the watchman, Thiel, were the principal witnesses. Their versions of the main transaction were in direct conflict,—the one establishing negligence on the part of the defendant, the other on the part of the plaintiff. The defendant now moves for a new trial. It is contended that there was error in admitting, on cross-examination, evidence of the watchman's quarrelsome disposition; in refusing to strike out, on motion, testimony which was given without objection; and in refusing to direct a verdict for the defendant.

W. P. Prentice, for the motion.

E. E. Sheldon, opposed.

COXE, J. For reasons stated at the argument the court would not have been justified in directing a verdict for the defendant. There was, upon the main issue, a disputed question of fact, which could not properly have been withdrawn from the consideration of the jury. The questions objected to, affecting the character of the witness Thiel, were, I think, proper on cross-examination. *Real v. People*, 42 N. Y. 270. Criticism is made that the declarations of the assistant mate were incompetent. That part of the testimony, however, to which the attention of the court is particularly directed as being prejudicial to the defendant, was admitted before any objection or exception was taken. But in any view of the case I am of the opinion that what was said by an officer of the vessel, during the altercation, was admissible as part of the *res gestæ*. *Curtis v. Railroad*, 49 Barb. 148.

Two of the exceptions argued relate to the refusal of the court to strike out certain evidence which was not objected to when offered. Without discussing the question whether the evidence should have been received, had a timely objection been interposed, it is sufficient to say that the rule is well settled that a refusal to strike out, in such circumstances, is not error. *Gawtry v. Doane*, 51 N. Y. 90; *Levin v. Russell*, 42 N. Y. 256; *Platner v. Platner*, 78 N. Y. 90. I have examined the other exceptions referred to in defendant's brief, but think none of them well taken.

The motion for a new trial is denied.

In re Accounting of BARNES, Assignee of Vetterlein & Co.

(District Court, S. D. New York. October 8, 1883.)

1. **BANKRUPTCY—ASSIGNEE'S ACCOUNTS—BOOK-KEEPER.**

On an assignee's accounting in bankruptcy, charges for the employment of a book-keeper will not be passed beyond what is proved to have been necessary in the administration of the estate, nor for a longer period than the exigencies required.

2. **SAME—RENT.**

Where charges are made for a book-keeper employed partly in the personal business of the assignee and partly for the estate, no apportionment of charges by the assignee will be approved, except upon proof of the services rendered, their necessity, and reasonable value. And the same rule applies to rent for offices used for both purposes.

3. **SAME—QUANTUM MERUIT.**

Where a separate office, or office privileges, are proved to be necessary in the business of settling a bankrupt estate, and such office room is furnished in a building of which the assignee is landlord and owner, he may be allowed, on a *quantum meruit*, the reasonable value of such room as is proved to have been necessary, for the necessary period, subject, however, to the jealous scrutiny and suspicion which attach to such a claim by the assignee in his own favor.

4. **SAME—REMISSION PROCEEDINGS.**

It is not the duty of an assignee to litigate legal demands in the interest of one set of creditors against another; and where a legal preferred demand in favor of the United States against the bankrupts, as a forfeiture for the value of goods fraudulently imported by the bankrupts, has been allowed by the district and circuit courts, any application for remission should be at the expense of the general creditors interested.

5. **SAME—ORDER OF COURT.**

An order from the court for the payment of certain disbursements in such proceedings having been obtained, the disbursements made were passed in the assignee's account.

6. **SAME—ATTORNEYS' CHARGES.**

The attorneys having charge of the proceedings in behalf of the assignee were bound to take steps to procure indemnity from the general creditors, in whose interests the remission proceedings were instituted by them, before incurring large expenses therein; not having done so, and the proceedings being fruitless and without benefit to the estate, *held*, neither they nor the assignee had any claim for their services in the remission proceedings, as against the fund.

In Bankruptcy.

James K. Hill, for the assignee.

Samuel Clark, for the United States.

BROWN, J. In determining the exceptions arising upon the report of the special examiner on the accounts of the above assignee, I find it impossible to reach any satisfactory result. The difficulties attending the administration of this estate through nearly 13 years have been extraordinary; the necessary expenses seemingly intolerable; and to these are added further claims, which are clearly inadmissible as they stand, but which cannot be wholly disallowed without evident injustice.

The assets collected, exclusive of interest on deposits, have been about \$114,000. The collections were all made, except about \$7,000, prior to January 1, 1873, or within less than two years of the assignee's