in passing upon the question as to whether the party was entitled to it, the plaintiff would only be entitled to actual, and not to punitive, damages, unless he was rudely treated by the agent; that is, if he was treated insultingly, or with malice, or something of the kind; willful, wanton conduct on his part. If the plaintiff did not have a transferable ticket, the agent had a right to so determine. A nontransferable ticket is sold at a reduced rate, and the party to whom it is given is alone permitted to travel on it, and, if he then sell it, it would deprive the railroad company of their additional profit.

Now, I do not know that I can say much more to you. You have the case before you, and, unless you are satisfied that the defendant was the agent who passed upon the railroad ticket that was presented, —and as I have instructed you that he was not the agent in passing upon that,—then the plaintiff would not be entitled to recover, unless it was for the conduct of the conductor of the train in refusing plaintiff a berth, and I believe there is no complaint upon that score. You can retire.

Verdict returned and judgment rendered for the defendant company.

WILCOX v. RICHMOND & D. R. Co.

(*Circuit Court of Appeals, Fourth Circuit.* October 11, 1892.)

No. 16.

1. DAMAGES—BREACH OF CONTRACT—MENTAL SUFFERING.
   In an action against a railroad company for breach of contract for special train, damages cannot be recovered merely for disappointment and mental suffering resulting from delay in departing to reach the bedside of a sick parent.
2. TENDER—COSTS—INTEREST.
   The hirer of a special train, who declined to take it because of the refusal of the railroad company to guaranty arrival in time to connect with another train, cannot recover interest and costs on the sum paid for such train, where the company tendered such sum at the time of refusal, before suit and in court.

In Error to the Circuit Court of the United States for the District of South Carolina. Affirmed.

Statement by HUGHES, District Judge:

This action was commenced in 1890 by the service of a complaint and summons on the defendant in the court of common pleas for Laurens county, state of South Carolina. The complaint alleges that plaintiff in error was a physician, attending the sittings of the State Medical Association at Laurens on the 24th of April, 1890; that at 3:45 P. M. of that day he was informed by telegraph of the dangerous illness of his father at Marion Court House, S. C.; that at that hour he contracted with the defendant railroad corporation to convey him to Columbia, S. C., by 10:20 of the night of said day, for which service he then

paid defendant the sum of $195; that he was anxious to see his stricken father at the earliest practicable moment, and to do so it was necessary to reach Columbia at the moment stated, or be delayed a considerable time, in view of which circumstances he entered into the contract stated; that the defendant was fully informed of the peculiar circumstances influencing him to make the contract; that the defendant failed and refused to perform its agreement; that the plaintiff, as a consequence of this breach of contract, suffered "great distress of mind, anxiety, mortification, and suspense," by reason of which he sustained damages in the sum of $5,000. As a second cause of action, plaintiff demanded the recovery of $195 and interest from the 24th day of April, 1890, and costs. His suit was for these latter sums, and for $5,000 damages for the first cause of action alleged. The defendant, in its answer, admits that the plaintiff wished to get a special train from Laurens to Columbia, and paid defendant $195 for such train. Defendant agreed to run the train for such sum, but notified the plaintiff that it could not guaranty that the train would reach Columbia in time to make connection with the Coast Line, though it had every reason to believe that it could make such connection, but the plaintiff refused to take the train unless the guaranty was made. This the defendant declined to do, and tendered the plaintiff the money back at once, which the plaintiff refused. The defendant furthermore alleges that it made every effort in its power to accommodate plaintiff, and, while it informed him that it believed the train would reach Columbia in time for the connection, it did not and could not reasonably be expected to guaranty the same. The defendant also alleges that it has heretofore offered the plaintiff the $195, now offers the same to him, and brings the said $195 into court, and again tenders it to the plaintiff. The cause was removed to the United States circuit court for the district of South Carolina. It came on for trial before a jury at Columbia, 2d December, 1890. The defendant, through its counsel, under the statute of South Carolina, interposed an oral demurrer to the first cause of action, to wit, that the complaint did not state facts sufficient to constitute a cause of action, in that damages could not be recovered on a breach of contract for mental suffering, unaccompanied with physical suffering or pecuniary loss. The court sustained the demurrer, and directed the jury to find a verdict on the second cause of action for plaintiff for $195, without interest or costs. Whereupon the plaintiff excepted, and now appeals, alleging for error: (1) That the court erred in not overruling the demurrer; (2) in instructing the jury not to find interest and costs for the plaintiff.

B. W. Ball and *C. A. Woods*, for plaintiff in error.

J. S. Cothran, for defendant in error.

Before FULLER, Circuit Justice, GOFF, Circuit Judge, and HUGHES, District Judge.

HUGHES, District Judge, *(after stating the facts as above.)* The complaint, in setting out the first cause of action, omits several material facts in the case. It alleges only the contract to be conveyed by a certain time, to

a certain place, for a certain sum of money paid; the motive of plaintiff for wishing to be conveyed; and the refusal of defendant to convey as desired. The defendant's refusal to guaranty arrival by the required time; the plaintiff's refusal to be conveyed except with such guaranty; the defendant's proffer of the money in return, after the plaintiff's refusal to be conveyed,—these latter facts cannot be considered in passing upon this demurrer, material as they are as elements in the transaction. The case presented by the demurrer, which admits only a part of the material facts, is not the one shown by the record, and is therefore little other than a moot case brought here for decision. The moot question is whether an action can be maintained which claims damages merely for an alleged "distress of mind, anxiety, mortification, and suspense," resulting from the nonperformance of a contract, no personal injury and no pecuniary loss having been sustained or being pretended; the anxiety and suspense of mind being the result solely of a delay in starting on a visit to a dangerously ill relative. As was said by the court in *Griffin* v. *Colver*, 16 N. Y. 489, the damages recoverable in actions of this character "must be such as may fairly be supposed to have entered into the contemplation of the parties when they made the contract; that is, they must be such as might naturally be expected to follow its violation, and they must be certain both in their nature and in respect to the cause from which they proceed." To the same effect was the decision in *Masterton* v. *Mayor, etc.*, 7 Hill, 61; and in *Telegraph Co.* v. *Hall*, 124 U. S. 444, 8 Sup. Ct. Rep. 577.

The complaint under consideration does not allege any pecuniary injury, such as the loss of an expected legacy, or of some advantage or thing of material value, as having resulted from plaintiff's failure to start on his visit to the sick person as promptly as he desired. He claims the damages incident to the mental distress and discomfort merely from delay in his departure, not for the anxiety naturally felt for the condition of the sick relative. He was the subject of two mental pains,—one for the condition of the sick person; the other from delay at the railroad station,—the latter only being the subject of this action. It cannot be pretended that damages from the latter cause of "anxiety" and "suspense"—uncertain, indefinite, undefinable, unascertainable, dependent so largely on the peculiar temperament of the person suffering the delay —was in the contemplation of the defendant when it entered into the alleged contract. It cannot be pretended that the defendant had in contemplation, in making the contract, the distinction between the plaintiff's natural anxiety for the sick father and his nervous impatience and worry of mind from detention at the place of departure. Eagerness to start on a journey, impatience of delay, and trouble of mind wrought by detention at a railroad station, have never before now been made the sole ground of an action for damages, and are the sole ground of plaintiff's claim for $5,000 damages in this suit.

The authorities are substantially agreed on the proposition that pain of mind, as distinct from bodily suffering, can be considered in actions for damages from injuries to the person, and for pecuniary loss and ex-

pense or like causes, incident to such injuries. But we know of no decided case which holds that mental pain alone, unattended by injury to the person, caused by simple negligence, can sustain an action. It was said in *Lynch* v. *Knight*, 9 H. L. 598, that "mental pain and anxiety the law cannot value and does not pretend to redress when the unlawful act complained of caused that alone." We think there was no error in the court below in sustaining the demurrer in this case, and in holding that, "in an action for the breach of a contract, damages cannot be recovered for disappointment and mental suffering only, there being no allegation of any other damage."

The complaint claims, as a second cause of action, the sum of $195, with interest from the 24th of April, 1890, till paid, and costs; the principal sum being the amount paid by plaintiff for the hire of a special train from Laurens Court House to Columbia, for the purpose of making close connection with the train from Columbia to Marion Court House. The record shows that defendant was ready to perform the service which it had engaged to perform, but that plaintiff refused to take the special train that had been hired; the ground of declining to take it being the refusal of defendant to guaranty his arrival at Columbia by the required time. The defendant had the right to refuse to run a special train at an irregular hour, at a speed to insure its arrival at a specified time. Its right to withhold a guaranty to that effect being such as legally and necessarily belongs to every railroad management, it followed that, when the plaintiff refused to take the special train proffered by the defendant, without such guaranty, the latter was exonerated from the performance of its obligation, and the plaintiff was without right in the premises, except to a return of the money which he had paid for the train.

The answer admits that the defendant declined to guaranty a connection in time; alleges the plaintiff's refusal to take the train; sets up a tender of the money in return, made at the time and before suit; and renews the tender in court, and proffers judgment for the principal sum; all in accordance with the practice in the state courts of South Carolina. The tender having been admitted, there was no error in the instruction of the court below to the jury to find for the plaintiff the sum of $195, without interest or costs.

The judgment of the court below, therefore, is affirmed.

HACKETT *et al.* *v.* MARMET CO.

(*Circuit Court of Appeals, Fourth Circuit.* October 11, 1892.)

No. 11.

1. EJECTMENT—TITLE TO SUPPORT—ADVERSE POSSESSION AND PAYMENT OF TAXES.
   In ejectment, in West Virginia, it is immaterial whether the paper title of the plaintiff is good or not, when he has proved adverse possession and payment of taxes for 10 years, for this gives a perfect title under the state statute of limitation.
2. LANDLORD AND TENANT—ESTOPPEL—DENIAL OF LANDLORD'S TITLE.
   Where a person admits that he stands in the relation of a tenant to another, he is estopped to deny the validity of his landlord's title.
3. SAME—LEASE—NOTICE TO QUIT.
   Where a lease provides that the tenant shall deliver possession on voluntarily ceasing to work for the lessor or on receipt of notice to quit, the lessor can maintain an action of ejectment when the lessee voluntarily ceases to work for him, whether valid notice to quit is given or not.
4. SAME—MISNOMER—EJECTMENT.
   The Marmet Company was incorporated under the laws of Ohio, and permitted to do business in West Virginia under that name, according to the laws of the state. It customarily used in West Virginia the name of the Marmet Mining Company, and executed a lease under this misnomer. Its identity, however, appeared both by proof and admissions. *Held*, that the Marmet Company could maintain an action of ejectment under the lease.

In Error to the Circuit Court of the United States for the District of West Virginia.

At Law. Action of ejectment by the Marmet Company against P. J. Hackett and others. Judgment for plaintiff. Defendants bring error. Affirmed.

Statement by HUGHES, District Judge:

This was an action in ejectment, instituted and conducted under the practice in such cases observed in West Virginia. The action was brought for the recovery of lots of ground and houses upon them, contained in a tract of land in Putnam county, in that state, embracing 4,500 acres, described in the declaration. At the trial of the cause, the defendants below elected to sever, and pleaded not guilty, severally. It was afterwards agreed upon the record that the case against P. J. Hackett should be tried singly, and that the final judgment in that action should be entered in each of the other cases,—about 120 in all. The defendants below had been miners in the employment of the plaintiff company, as such occupying houses on its property, under leases the same as that under which Hackett held. That lease contained the following stipulations:

"This lease shall terminate and close whenever the said lessee, from any cause, ceases to work for said company. The said company may terminate this lease at any time by giving the said lessee ten days' notice in writing that the same shall end and terminate upon some day named in such notice, and upon the day so named in said notice this lease shall terminate and end, and the said lessor may re-enter and take possession of said leased premises without further notice or proceeding. The said lessee hereby agrees and promises to pay to the said Marmet Mining Company the rent, as aforesaid, monthly, and also agrees that such rent may be withheld by said company