

Trial.—Riddell, J.]

[Jan. 13.]

BRAZEAU v. CANADIAN PACIFIC RY. CO.

Railway—Passenger—Right to particular seat—Authority of conductor—Smoking car—Removal of passenger from seat taken by another and temporarily vacant—Assault—Rights of passengers—Damage—Costs.

The plaintiff brought an action for an assault upon him by a conductor of a train of the defendants, and for removing him from a certain seat in a car. A party of five gentlemen associated in business were travelling from Montreal to Ottawa on the defendants' railway, and had been sitting together in the smoking car conversing about matters of common interest. One of them, F., required to go to the lavatory, and left his seat. No baggage or clothing was left to indicate that he intended to return, though he did so intend. While he was in the lavatory the train stopped at a station, and the plaintiff got in. Coming into the car and seeing this vacant seat he went to take it; but before sitting down he was told that the seat belonged to another who was in the lavatory, and was asked to take another seat which was vacant. He, however, insisted on occupying the seat. Shortly afterwards F. returned and wanted his seat. He pointed out to the plaintiff that there was another vacant seat, and it was explained that the five gentlemen were travelling together, but he refused to vacate, and appeal was made to the conductor who told the plaintiff he must give up the seat. The plaintiff remaining obdurate, the conductor finally took him by his coat and gently lifting him from the chair, placed him in the passage way, and pointed him to a vacant chair.

Held. 1. A railway company is liable for the acts of its conductors while they act in the course of their employment, however improper such acts may be.

2. It makes no difference that the plaintiff acted rather to annoy the person whom he deprived of his seat and his friends than for any other reason, that the law cannot consider the object or purpose of the action of any person who is acting within his rights.

3. That the custom of putting smoking cars on trains, though a concession to the smoker and intended for his comfort, is not compulsory on the company.

4. The company whether at the common law or by statute are bound—holding themselves out as common carriers—to find