

Utica to Rome on the morning of September 11, 1881. At the close of the evidence the defendant moved for a nonsuit which motion was granted and plaintiff excepted.

MERWIN, J. Concededly the plaintiff had a ticket from Utica to Rome, that he had purchased the afternoon before. As to what occurred just prior to his ejection, there is a conflict of evidence. On the part of plaintiff, there was evidence tending to show that as the conductor came along and asked the plaintiff for his ticket he tried to find it and couldn't; told the conductor he had one and would find it in a minute; felt through his pockets, said to the conductor, "you go through the train and by the time you come back I will find my ticket, if I don't, I have money to pay my fare;" that the conductor said, "find your ticket or get off the train;" that the plaintiff said, "maybe you better put me off this train;" that then the conductor pulled the bell-rope to stop the train; that before it fully stopped the plaintiff found his ticket and offered it to the conductor who refused to take it and put the plaintiff off.

On the part of the defendant the conductor testified that the plaintiff was in the next to the last car; that as he came along he asked him for his ticket; that the plaintiff found what was apparently a ticket and the occurrence then proceeded as follows: "I asked him for his ticket: he said he would not give it to me until he got to Rome; I said if you don't give me that ticket I will have to put you off; he said, I won't give it to you; I said, very well, I will have to stop the train and put you off; I then rang up the train, the train stopped at once, then I told him to get out; he got up and walked out down on the ground, then he wanted me to take the ticket and I refused; I told him I had stopped the train to put him off and I wouldn't carry him; I didn't stop that train for any purpose except to have him get off; the rules are, ring up the train and put off a man who don't show his ticket or pay his fare."

The nonsuit was granted apparently upon the theory that as according to the plaintiff's evidence, the ticket was not produced and tendered before the bell was actually rung therefore the conductor was justified in putting the plaintiff off.

The counsel for defendant claims that the omission to produce the ticket was equivalent to a refusal, and brings the case within *Hibbard v. N. Y. & E. R. Co.*, 15 N. Y. 455. In that case the plaintiff had a ticket from Hornellsville to Scio; had shown it to the conductor once, and then, afterward and after the train had passed another station, was asked to show it again and refused and was put off. It was held at Circuit that he was not bound to show it again: but the Court of Appeals held that he was, and that a rule to that effect was reasonable, and reversed the judgment.

In *O'Brien v. N. Y. C. & H. R. R. Co.*, 80 N. Y. 236, it is said by Rapallo, J., that if in consequence of the fractious refusal of a passenger to pay the full fare the company has a right to demand, the train is stopped for the sole purpose of putting him off, he is not entitled to insist on continuing his trip on paying the fare, but may be removed from the train. If, however, the stoppage is at a station, a tender before removal would answer. *Guy v. N. Y., O. & W. R. Co.*, 30 Hun, 399; *Pease v. D. L. & W. R. Co.*, 16 W. Dig. 266.

In *Maples v. N. Y. & N. H. R. Co.*, 38 Conn. 558, the rule is laid down that a passenger whose ticket is mislaid is entitled to a reasonable time to find it.

In *Railroad Co. v. Garrett*, 8 Lea (Tenn.), 438, it was held that a passenger who gets upon a train in good faith, in ignorance of the fact that a tax certificate would not pay his fare, having no intention to impose upon the carrier, cannot be treated as a mere trespasser, but on failure or refusal to pay his fare after request and after reasonable opportunity allowed to comply, he may be ejected, but if before eviction another person offer to pay the fare the carrier is bound to receive it and convey the passenger. The offer in that case was after the bell was rung to stop the train. In the present case if the ticket of the plaintiff was mislaid and he in good faith was trying to find it, he was entitled to a reasonable time to enable him to do so, if he could, and if in case of failure to find it after such reasonable opportunity he was willing and ready to pay his fare, the conductor had no right to put him off. Whether