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pany, 37 La. Ann. 589, determined by the Supreme Court of Louisiana in 1885. That was an application for a writ of mandamus against a railroad company to compel it to perform the obligation it had assumed by what the court regarded as an express written contract with the city of New Orleans to repair certain streets in that municipality. The court held that the writ was properly refused, the principal reason being that, according to the principles of the law of mandamus, the remedy by mandamus cannot be invoked to enforce obligations arising simply from contract as distinguished from a duty imposed by law. It is said, and it is probably true, that the act of 1888 was passed in order to overcome the difficulties suggested by that decision. However this may be, it is clear that the question here is wholly different from that presented in the other case. That question, as we have seen, is whether a statute authorizing the enforcement, by writ of mandamus sued out by a parish or by a municipal corporation, of contracts such as are described in the act of 1888, is a law forbidden by the contract clause of the Constitution.

We hold, for the reasons we have stated, that such a law, simply giving an additional remedy to the party entitled to performance, without impairing any substantial right of the other party, does not impair the obligation of the contract sought to be enforced.

*Judgment affirmed.*

PENNSYLVANIA RAILROAD COMPANY v. WABASH,  
ST. LOUIS AND PACIFIC RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF ILLINOIS.

No. 158. Argued and submitted January 18, 1895. — Decided March 4, 1895.

The Pennsylvania Company notified the Wabash Company that after a date named no ticket sold by that company would be recognized as entitling the holder to pass over the Pennsylvania road. The Wabash Company after that date sold a ticket for a passage over the Pennsylvania road. When the purchaser reached that road he offered his ticket to the conductor. The conductor refused to take it, and, when the holder of it

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declined to pay his fare, caused him to be put off the train. *Held*, That the refusal to recognize the ticket was within the right of the Pennsylvania Company, and that that closed the matter, as between the two companies in respect of the unauthorized sale; but that the ejection from the train was done by the Pennsylvania Company on its own responsibility, and was not made legally necessary by any thing done by the Wabash Company which the Pennsylvania Company was bound to recognize or respect.

THE case is stated in the opinion.

*Mr. George Hoadly* for appellant.

*Mr. George Willard* for appellant submitted on his brief.

*Mr. Wells H. Blodgett* for appellee submitted on his brief.

MR. JUSTICE HARLAN delivered the opinion of the court.

On the 7th day of December, 1880, the Wabash, St. Louis and Pacific Railway Company, by its agent at Omaha, Nebraska, sold to one W. J. Connell a railroad coupon ticket purporting to be good to the holder for passage over certain railroads extending from Omaha to the city of New York — one of which was the road belonging to the Pennsylvania Railroad Company, and extending from Philadelphia to New York.

It is to be taken upon this record that the Wabash Company had no authority to sell a ticket entitling the holder to passage over the appellant's road between Philadelphia and New York. Indeed, the Wabash Company had notice that the Pennsylvania Company would not recognize any tickets sold by it.

In the course of his journey to the East, Connell took passage at Philadelphia on one of the appellant's trains for New York. Being asked by the conductor for his ticket, he presented the Philadelphia-New York coupon of the ticket purchased at Omaha. The conductor, in conformity with instructions from appellant, refused to accept that coupon in payment of fare. Connell refused to make payment otherwise than with the coupon so tendered by him, and, because

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of such refusal, was ejected by appellant's conductor from the train, and left at a way-station.

Connell subsequently sued the Pennsylvania Railroad Company in the Superior Court of Cook County to recover damages on account of his expulsion from the train of that company.

The Pennsylvania Railroad Company thereupon, May 13, 1882, gave the following notice to the Wabash, St. Louis and Pacific Railway Company :

"W. J. Connell has brought suit against the Pennsylvania Railroad Company in the Superior Court of Cook County, Illinois, February term, 1882, to recover damages from the said company in the sum of \$15,000 for an alleged breach of contract for declining to accept from him, December 16, 1880, in payment of passage fare from Philadelphia to New York, a ticket alleged to have been sold to him at Omaha, December 7, 1880, by Frank E. Moores, agent, reading via Wabash, St. Louis and Pacific Railway, Baltimore and Ohio Railroad and Pennsylvania Railroad, Council Bluffs to New York, for O. 145, No. 5. As under the notice given by the Pennsylvania Railroad Company to the Wabash, St. Louis and Pacific Railroad Company, December 2, 1880, the latter had no authority whatever to sell the ticket referred to, the Pennsylvania Railroad Company will look to the Wabash, St. Louis and Pacific Railway Company for reimbursement of any amount the former may be compelled to pay as damages or otherwise in consequence of the sale of such ticket to said Connell as alleged. Having this interest in the suit, your company will probably desire to join the Pennsylvania Railroad Company in conducting the defence, and you are hereby invited to do so."

There was a first and second trial of the action brought by Connell. The second trial resulted in a verdict and judgment in his favor for \$15,000. That judgment was affirmed in the appellate court of Illinois. But on appeal to the Supreme Court of Illinois the judgment was reversed. *Pennsylvania Railroad v. Connell*, 112 Illinois, 295. Upon the final trial one of the questions passed upon by the jury was whether

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the ejection of Connell from the train was accompanied by "unjustifiably violent and excessive" force, and whether the injuries he sustained were wantonly and maliciously inflicted. There was a verdict and judgment against the Pennsylvania Railroad Company for \$7000. That judgment was affirmed in the appellate court, and also in the Supreme Court of Illinois. *Pennsylvania Railroad v. Connell*, 127 Illinois, 419.

The amount expended by the Pennsylvania Company in and about the defence of the action brought by Connell was \$13,328.94.

In a suit brought in the Circuit Court of the United States for the Northern District of Illinois by the Wabash, St. Louis and Pacific Railway Company against the Central Trust Company of New York and others — in which case all the property and assets of the Wabash Company in Illinois were in course of administration, and were in the possession of receivers appointed by that court — the Pennsylvania Railroad Company filed intervening petitions and asked an order directing the receivers to pay the sums reasonably expended by it in and about the defence of the action brought by Connell.

The case made by the intervening petitions was heard upon demurrers interposed by the receivers, and the petitions were dismissed without prejudice at the cost of the petitioner. From that order the present appeal was prosecuted.

The record does not disclose the specific grounds upon which the Circuit Court dismissed the appellant's intervening petitions without prejudice.

If the Circuit Court was of opinion that the appellant should first have obtained a verdict and judgment at law, and, upon that ground, declined to consider appellant's claim upon its merits, the judgment should not be reversed if — assuming all the facts set out in the intervening petitions to be true — there was no liability upon the part of the Wabash, St. Louis and Pacific Railway Company for the amount expended by the Pennsylvania Railroad Company in defending the action brought by Connell.

We are clearly of opinion that no such liability existed. The Pennsylvania Company had in its hands a simple rem-

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edy for the wrongful sale by the Wabash Company of a ticket over its road from Philadelphia to New York, namely, to refuse to recognize that ticket by whomsoever presented. It applied that remedy; for it declined to accept the coupon tendered by Connell and stood upon its undoubted right to demand money for his fare. As between the two railroad companies, this closed the matter in respect to the unauthorized sale by the Wabash Company of a ticket for passage over the Pennsylvania road. The ejection of Connell by the Pennsylvania Company from the train—particularly if such ejection was accompanied by unnecessary force—was upon its own responsibility, and was not made legally necessary by anything done by the Wabash Company which the other company was bound to recognize or respect. It had no direct connection with the wrong of the Wabash Company in selling a ticket over the road of the Pennsylvania Company.

It results that the court below would not have erred if the intervening petitions had been dismissed upon their merits.

The judgment dismissing them without prejudice is therefore not one of which it can complain, and it is

*Affirmed.*

## CALIFORNIA v. SOUTHERN PACIFIC COMPANY.

## ORIGINAL.

No. 7. Original. Argued December 19, 20, 21, 1894. — Decided March 18, 1895.

This court has no original jurisdiction of a suit between a State on the one side, and citizens of another State and citizens of the same State on the other side.

When an original cause is pending in this court, to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and the finality which should characterize such an adjudication, to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigations in some other tribunal.

The city of Oakland and the Oakland Water Front Company are so situated in respect of this litigation, that the court ought not to proceed in their