

## Chamberlain v. Milwaukee and Mississippi Railroad Company

11 Wis. 248 (1860)

*In an early effort to give rights to injured workers, the Wisconsin Supreme Court determined in this case that an employer can be held liable when the negligent actions of one employee result in injury to another employee. Justice Byron Paine wrote the opinion. Justice Orsamus Cole wrote a concurring opinion.*

Chamberlain, the plaintiff, was working as an express messenger for James Holton & Company and was a passenger on a Milwaukee and Mississippi Railroad Company freight car traveling from Milwaukee to Madison and back. Prior to departure, railroad Deputy Superintendent Merrill asked Chamberlain (a minor) to act as brakeman for the trip. While employed as brakeman he was thrown from the train and seriously injured as a result of the negligent conduct of the engineer.

This case came before the Wisconsin Supreme Court twice. The first time, the Court ordered a new trial. At that trial, the lower court sought to determine whether Chamberlain was, at the time of his injury, a passenger or an employee of the railroad. The judge instructed the jury that if it found Chamberlain was a passenger and if he was in an improper place for a passenger at the time of the accident, “then the injury resulted from his own carelessness, and the defendant is not liable.” The jury returned a verdict for the defendant. Chamberlain appealed.

The case came back before the Supreme Court. This time, the central issue was the instruction the circuit judge gave to the jury at the second trial. Justice Paine wrote that the trial judge’s refusal to instruct the jury that if Chamberlain was in an improper place for a passenger because of a request from the company, then the company could be held liable was “calculated to mislead the jury.”

The Court also sought to determine whether an employee could recover damages from a company for injuries caused by the negligence of another employee. While most other cases regarding this issue found that the employee could not recover, Paine wrote that it was not the Court’s duty to simply “count the cases on each side of a question,” but to analyze the development of the law. He wrote: “The great object of this common law principle is not to protect those in one department against those in another, but to protect every one from injury by the negligence of another.”

The railroad argued that prohibiting employees from recovering damages for injuries caused by a colleague would encourage all employees to take more care in their duties. Paine wrote that just the opposite was true, saying that employers, faced with such liability, would hire the most qualified individuals to reduce the chances of an incident.

Justice Cole’s concurring opinion, agreeing that the circuit court improperly instructed the jury, did not judge whether an employee could recover damages from an employer in this situation. He wrote: “decisions upon that point . . . are quite unanimous that recovery could not be had under such circumstances. But whether these decisions rest upon sound reason and an enlightened public policy, I will not now undertake to say.”