

SECOR and others v. TOLEDO, PEORIA & WARSAW R. Co. and others.

(Circuit Court, N. D. Illinois. January 9, 1882.)

1. RAILROADS—INJURY TO PASSENGER—CONTRIBUTORY NEGLIGENCE.

A passenger, on a train that had approached a station and was still moving slowly, stood on the lower step of a car, in the act of stepping to the platform of the station, when, in consequence of the car being moved forward with a jerk, he was thrown upon the platform and injured. *Held*, that he was guilty of contributory negligence in attempting to alight from the train while it was in motion.

On the Intervening Petition of John Rawls.

John Lyle King and Sanders & McKinney, for petitioners.

John M. Jewett and Tenny, Flower & Cratty, for defendants.

DRUMMOND, C. J. The property of the railroad was sold under a decree of the court. Certain funds were paid into court, and upon the reorganization of the company by the purchasers under the sale a bond was filed in court for the purpose of meeting all claims which might be sustained by the court while the property was in the possession of, and operated by, the receiver under its order. This is a petition asking compensation for an injury which the petitioner sustained in consequence of a fall while attempting to get off the train when it was operated by the receiver. On the fifth day of March, 1878, the petitioner took passage on the train at Bushnell, in this state, for Scottsburg. The speed of the train on arriving at Scottsburg station was lessened for the purpose of stopping at that station. While the train was still slowly moving, three passengers left it, reaching the platform at the station in safety; but while the train was still in motion the petitioner went out upon the rear end of the forward car of the train and was standing on the lower step, the train having apparently almost ceased to move; and while he was in the act of stepping from the car to the platform of the station, the car was moved forward with a jerk, in consequence of which the petitioner was suddenly thrown with violence upon the platform of the station and injured.

Admitting these to be the material facts established by the evidence, the question is whether the petitioner is entitled to recover, waiving all other questions which have been made and argued in the case. The principal difficulty in this case arises from what the evidence shows, and in fact what all our experience proves, that the passengers who intend to leave a train at a particular station where

it is expected to stop, as the train slows up and immediately before it actually stops, are in the habit of going out on the platform of the car, and often, as was the fact in this case, leaving the steps of the car. Admitting that there was a sudden jerk of the car, with more or less violence, was there such negligence on the part of the petitioner as to relieve the receiver from all liability in the case? We need make no controversy as to the position of the receiver, or of his liability as such, and may assume, as to the rights of the petitioner, that he stands in the place of the company. We think it must be stated, as a sound proposition in law, that wherever passengers undertake to leave a train under such circumstances as these, before it has actually stopped, they take the risk upon themselves. If they choose to act in accordance with the promptings caused by their own impatience, and to leave the train before it can be done with safety, the risk is theirs. In this case, in addition to the statement that has been made of the actual condition of the petitioner at the time, there is reason to believe that his attention was withdrawn from what he was about to do by conversation with another person, who was then or had just been talking to him.

It has been decided by the supreme court of this state that a passenger has no right to attempt to alight from a train of cars when in motion; and if he undertakes to do so, without the knowledge or direction of any employe of the company, it is at his peril. *O. & M. R. Co. v. Stratton*, 78 Ill. 88; *Ill. Cent. R. Co. v. Slatton*, 54 Ill. 133; *Chi. & Alton R. Co. v. Randolph*, 53 Ill. 510; *Chi. & N. W. R. Co. v. Scates*, 90 Ill. 586.

It would seem to follow, from the proposition just stated, that a railroad passenger cannot recover for any injury caused as this one was, although it may have been occasioned by the combined act of himself in thus attempting to alight from the train, and the jerk of the car. It was his duty not to expose himself to such a contingency, and to remain in the car before thus subjecting himself to danger; and it also follows that those who have the management of a train are not bound to assume that the passengers will attempt to alight from a car until it has actually stopped.

KERTING v. AMERICAN OLEOGRAPH Co. and others.

(Circuit Court, N. D. Illinois. December 23, 1881.)

I. REMOVAL OF CAUSES—MOTION TO REMAND.

A bill was filed in a state court on October 21, 1880, and the cause was at issue and standing for hearing on November 30, 1880. Under the law of the state there was a term of that court held every month, commencing on the third Monday of each month, and the rule of the court in the trial of equity cases was that where any chancery case is at issue, upon notice and motion of either party, a cause, at any time within 10 days of the commencement of a term for which a trial calendar may be ordered made, may be placed on the trial calendar, etc. The cause was placed upon the trial calendar on March 30, 1881, and an application was made to the state court on May 16, 1881, to remove the cause to the circuit court of the United States, when a record of the cause was filed in that court. *Held*, on a motion to remand, that the cause must be remanded to the state court, on the ground that the application for removal was made too late, within the meaning of the third section of the act of congress of 1875.

Motion to Remand.

C. M. Hardy, for complainant.

Conger & Gorten, for defendant.

DRUMMOND, C. J. A motion is made in this case to remand it to the circuit court of Cook county. The bill was filed in that court on the twenty-first of October, 1880, and the process issued in the cause was returned to the November term. Under the law there is a term every month of that court, commencing on the third Monday of each month. The answers were filed to the bill on the sixteenth of November, 1880. On the thirtieth of March, 1881, an order was made by the state court on the application of the plaintiff, and due notice that the cause should be set for hearing for the April term next. On the sixteenth of May, 1881, during the April term, and before the cause was heard, an application was made, under the act of 1875, for the removal of the cause to this court upon the proper petition and bond filed. There was at that time filed in this court a record from the state court; and, some time since, objection was made that the application for removal had not been made in time, which was then held not to be valid, because, by the transcript from the state court, it did not appear that any replication had been filed to the answer, and that the cause was at issue. Since then there has been a supplemental transcript filed from the state court, from which it appears that, after this objection was taken in this court, an application was made to the state