

PRESTON v. SMITH.¹*(Circuit Court, E. D. Missouri. May 26, 1885.)*

BILL TO QUIET TITLE—LIFE-TENANT AND REMAINDER-MAN.

A remainder-man cannot maintain a bill against a life-tenant to prevent his denying the former's interest in the estate, and from making leases extending beyond the term of his natural life.

In Equity.

Henry Hitchcock, for complainant.

John Wickham and Given Campbell, for defendant.

TREAT, J. The bill alleges that the defendant is a tenant for life, and the plaintiff remainder-man in fee, expectant on certain impossible conditions to the contrary. It charges that she has made, and is about to make, leases extending beyond the term of her natural life; and also is asserting that the defendant has no title or interest in the estate. The court is prayed to enjoin said defendant from making such leases, and from asserting that defendant has no title or interest in the estate. The proposition is somewhat novel. Without undertaking to review the many cases cited as to bills of peace, or *quia timet*, whether parties are in or out of possession, it must suffice that none goes so far as to uphold a bill against a tenant for life, in possession, to restrain him from making leases which might by possibility extend in terms longer than his natural life. It is obvious that if defendant is only tenant for life, no lease by her made could extend legally beyond her life. Hence there is no occasion for the interposition of equity to restrain one from doing a legal impossibility. It may be that the purpose of this proceeding was to obtain a judicial decision as to the title in the plaintiff, if any, subsequent to the death of the defendant. Why should she, during her life-time, be made a party to controversies which can arise only between others after her death? It may or may not be that the claim of the plaintiff is ill-grounded, and that she and the other children of William Christy are entitled to said estate. The court cannot pass upon that question on the present demurrer.

Demurrer sustained.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

WABASH, ST. L. & P. R. CO. *v.* CENTRAL TRUST CO. OF NEW YORK

(Circuit Court, D. Indiana. May 9, 1885.)

1. RAILROAD COMPANIES—PERSONAL INJURIES—CONTRIBUTORY NEGLIGENCE—MATTER OF DEFENSE.

In actions for injuries caused by negligence, contributory fault is, in the federal courts, matter of defense, of which the burden of proof is upon the defendant, and consequently reasonable presumptions in respect to matters not proven or left in doubt should be in favor of the injured party

2. SAME—CONTRIBUTORY NEGLIGENCE DEFEATS ACTION, WHEN.

Culpable negligence of the complainant, properly so called, which contributed to the injury, must always defeat the action; but the nature of the primary wrong has much to do with the judgment, whether or not the alleged contributory fault was blameworthy. If it was of a negative character, such as lack of vigilance, and was itself caused by, or would not have existed, or no injury would have resulted from it, but for the primary wrong, it is not in law to be charged to the injured one, but to the original wrong-doer.

3. SAME—ACTING ON PRESUMPTION THAT RAILROAD TRAINS WILL BE OPERATED WITH DUE CARE.

A party has not an unqualified right to act on the presumption that railroad trains and other dangerous agencies will always be operated with the care and vigilance required by law or custom; and if he goes upon railroad and highway crossings, or into like dangerous situations, without precautions against negligence on the part of those in charge of such agencies, he will himself be guilty of negligence.

4. SAME—FINDING NOT SUSTAINED BY EVIDENCE.

Every case must be determined upon its own circumstances. Finding of the master that petitioner was guilty of contributory negligence, and not entitled to recover for the injury received, *held* not sustained by the evidence.

Exceptions to Master's Report. Intervening petition of Thomas Ingram.

Jacob B. Julian, for petitioner.

Chas. B. Stuart, for receivers.

Woods, J. The master has found against the petitioner on the ground of contributory negligence, and the question presented is whether or not the finding is supported by the evidence. The entire evidence upon the point, and the master's view of it, are set forth in the report as follows:

Elijah Ingram testified as follows: "I am petitioner's son, and had charge of team when mare was injured. It was between 10 and 12 o'clock A. M. Was hauling gravel for Hanway & Cooper. I was unloading gravel on the north side of the tracks, on East street. A Wabash train came backing down. I was not looking for a train. I saw it across the street, and tried to get horses away, and could not. There was a man walking along at rear of train, and I told him to stop it, and he gave the signal, but it did not stop until the rear car struck the mare. I did not hear bell nor whistle." *Cross-examined.* "I had been hauling there 3 or 4 days or a week, and knew trains were running on that track. I did not want to drive onto the track, because it was dangerous; but was told to drive in there by the man who was there in charge for Hanway & Cooper. My team was facing west, and there was no time for me to get them out of the way after I saw the train coming. I knew I would be in that fix if train came. The brakeman who was walking along by the