

ing and valuable improvements thereon. The authorities are all one way on the question. *Vallette v. Bennett*, 69 Ill. 632; *State v. West*, 68 Mo. 229; *Kelly v. Hurt*, 74 Mo. 562; Big. Estop. 574-579; *Pendleton Co. v. Amy*, 13 Wall. 305, 306. So Freeman on Executions (§ 307,) says:

"When defendant, having knowledge of a sale, permits it to stand unquestioned for a long period, his inaction affords a very strong presumption that he acquiesced in the sale. This acquiescence cannot be withdrawn after several years, and when the property has probably passed into the hands of a stranger to the original sale."

The rule is thus stated in 2 Pom. Eq. Jur. § 965:

"When a party, with full knowledge of his rights, and of all the material facts, freely does what amounts to a recognition of the transaction as existing, or acts in a manner inconsistent with its repudiation, or lies by for a considerable time, and knowingly permits the other party to deal with the subject-matter under the belief that the transaction has been recognized, or freely abstains, for a considerable length of time, from impeaching it, so that the other party is reasonably induced to suppose that it is recognized, there is acquiescence, and the transaction, though originally impeachable, becomes unimpeachable in equity. Even where there has been no act or language properly amounting to an acquiescence, a mere delay, a mere suffering of time to elapse unreasonably, may of itself be a reason why courts of equity refuse to exercise their jurisdiction in cases of active and constructive fraud, as well as in other instances. It has always been a principle of equity to discourage stale demands. Laches are often a defense wholly independent of the statute of limitations."

Viewed either at law or in equity, plaintiff's action must fail. Judgment will go for defendant, with leave to plaintiff, after satisfaction of the costs herein, to withdraw the sum of \$41.10 heretofore paid into this court.

MISSOURI PAC. R. CO. v. TEXAS & PAC. R. CO., (LABOY, Intervenor.)¹

(Circuit Court, E. D. Louisiana. June 16, 1888.)

CARRIERS—OF PASSENGERS—INJURIES—BOARDING MOVING TRAIN.

No recovery can be had from a railroad company for injuries received while attempting to board a moving train without the advice or direction of defendant's agents.²

On Exceptions to Master's Report.

The intervenor, William Laboy, sought to recover of the Texas & Pacific Railroad Company damages for injuries received while attempting to board the defendant's train, operated by the receivers of said road. The master reported adversely to the claim, and the intervenor excepted.

¹ Publication delayed by inability to obtain copy of opinion at time of rendition.

² On the general subject of negligence in alighting from and boarding moving trains, see *Covington v. Railroad Co.*, (Ga.) 6 S. E. Rep. 593, and note; *Watson v. Railway Co.*, (Ga.) 7 S. E. Rep. 554 and note.

Charles O. Lauve and C. S. Kellogg, for intervenor.
L. De Poorter, for the receiver.

PARDEE, J. The evidence establishes, as the master reports, that the intervenor received the injuries of which he complains in attempting to get on the passenger train of the Texas & Pacific Railway Company while the same was in motion, and before it stopped at a regular station on the line; that in so getting on the train he was neither advised nor compelled by the agents of the company; and that the intervenor's said attempt contributed directly to his injuries. It is the settled jurisprudence of Louisiana, whose laws control as to the responsibility in this case, that no person can recover damages for injuries received where he has himself contributed to the negligence which caused the injury. See *Knight v. Railroad Co.*, 23 La. Ann. 462, and cases there cited. Attempting to mount a moving railroad train without the advice and direction of the railroad's agents, is negligence, according to all respectable authorities, text-books, and adjudged cases. See *Shear & R. Neg.* § 283; *Hutch. Carr.* § 641; 2 *Ror. R. R.* 1111. The case of *Knight v. Railroad Co.*, above cited, was directly on the point. The exceptions to the master's report will be overruled, and the report will be confirmed.

AMERICAN WELL-WORKS v. RIVERS.

Circuit Court, D. Louisiana. June 14, 1888.)

CONTRACTS—CONSTRUCTION.

A written contract, by which plaintiff agrees to sink an artesian well for defendant, supplying a given quantity of water, does not require that the water should be potable and fit for washing and for making steam, though plaintiff knew defendant was a hotel keeper, and desired water of that character for hotel purposes.

At Law. On motion for new trial.

Action by the American Well-Works against Robert E. Rivers to recover for sinking an artesian well. Verdict for plaintiff, and defendant moved for a new trial.

Before PARDEE and BILLINGS, JJ.

A. C. Lewis, for plaintiff.

Gibson, Hall & Montgomery and Rouse & Grant, for defendant.

PARDEE, J. On the original pleadings in this case the plaintiff was entitled to judgment. The answer admits the contract sued on, admits plaintiff's compliance with all the specified stipulations of the contract, and rests the defense upon a claimed construction, not justified by the

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