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Liability of Railroad Corporations for Negligence Resulting in Injury to Passengers or Employees

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Liability of Railroad Corporations for Negligence Resulting in Injury to Passengers or Employees

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by

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INTRODUCTORY.

It is impossible in a short thesis like the following to give more than a bare outline of the general rules of the subject of Negligence, a subject replete with nice distinctions and subtilities and whose doctrines are only with great difficulty reduced to any set formula. The writer has only attempted to state with as much accuracy as possible the present doctrines under the indicated subjects and to illustrate them with the later decisions of the courts of this state . More cases could have been cited in nearly every instance but the writer thinks that enough have been cited to give the reader more than a superficial view of the subject.

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NEGLIGENCE IN GENERAL.

Negligence has been defined by Swayne, J. (Balt. & P.R.Co. v. Jones 95 U.S.439--441) as"the failure to do what a reasonable and prudent person would have ordinarily have done under the circumstances of the situation, or doing what such a person under the existing circumstances would not have done. The essence of the fault may lie in omission or commission. The duty is dictated and measured by the exigencies of the occasion."

The liability for negligence is limited to the natural and probable consequences of the act or omission; the law regards the the proximate and not the remote cause, but the injury will not be too remote if it ought to have been apprehended as a natural consequence of the act even though the negligence of a third party intervenes. The question of proximate cause is ordinarily one for the jury.

The relation of the court to the jury on the question of negligence is difficult to define with any exactness. The court defines the legal duty and the jury find the facts. The jury applies the law as declared by the court to the facts and determines what the duty was and whether or not it was performed. But the question of negligence is oftentimes so delicate, and the jury, especially in actions against a corporation, so apt from the popular prejudice

against them, to find contrary to the facts, (this has been commented upon judicially, Herring v. N.Y.& E. Ry. I3 Barb. 9--I5, Suydam v. Grand St. & N.Ry. 4I Barb.375--380) that the court will order a non-suit or a setting aside of the verdict when there is no evidence of a legal duty and its breach.

Negligence is generally said to be a mixed question of law and fact. Questions of conflicting evidence are for the jury, and they also decide under instructions from the court as to the care or negligence of each party.

The doctrine of contributory negligence is that a person cannot recover for an injury to which he has contributed by his want of ordinary care, the care which a prudent man would excercise. The taking of risks is not necessarily negligence, nor is it negligence for one person to expose hinself to danger in order to save the life of another who is in peril from the negligence of the company. A direction or invitation of the servants of the company may in certain cases relieve the plaintiff fron the charge of contributory negligence, but this rule does not apply to a mere permission. The fact that a person is a wrong doer does not give the servants of the company any license to do him harm; this rule is generally applied to the cases of persons run over while wrongfully on the property of the company. In cases of injury to children, the degree of care required from the child is measured by

his years and descretion, and what would be negligence in an adult would not be so considered in the case of a young child, and it is to be noted in this connection that directions by the servants of the company to young persons and children may have the effect of force.

INJURIES TO EMPLOYEES RESULTING FROM THE NEGLIGENCE OF THE CORPORATION IN FAILING TO FURNISH SAFE APPLIANCES AND PLACES IN WHICH TO WORK.

It is the duty of the corporation to furnish its employees with safe appliances and places in which to work and in case of their failure in this respect they are liable for injuries arising therefrom. The rule is not applied with great strictness, for reasonable care in this respect is all that is exacted and where defects occur in implements furnished, knowledge of the defect must be brought home to the employer or proof that he omitted proper care to discover it. Devlin v. Smith (I882) 89 N.Y. 470. The master is not an insurer and while he must provide safe machinery he does not guarrantee that it will never fail. Dudley v. N.Y.L.E. & W. 20 Week. Dig. II8. aff. 99 N.Y. 606. And a master is not bound to provide against possible neglect or inattention and is not bound to provide the best and safest means known and may use his owm judgment provided the means are reasonable safe. Stringham v. Hilton (I888) III N.Y. I88.

But ignorance by the master cannot be set up as a defense when by peoper c are the master could have discovered and remedied the defect. Hillis v. Hine (I887) II St. Rep. 636. and is it matters not by whom the defective implement was constructed so long as it was furnished by the masters direction. Ryan v. Miller I2 Daly 77.

Concurrent negligence of the employer and a co-servant does not exonerate the employer, as where in a collision caused by the negligence of an employee two cars telescoped and by reason of defective buffers injured a co-servant, Ellis v. N.Y.L.E.& W. (I884) 95 N.Y. 546; or where plaintiff was thrown from a car platform through the negligence of a fellow servant his injuries being caused by being run over by the cars by reason of a defective brake. Lilly v. N.Y.C.& H.R.R.R. (I887) I07 N.Y. 588.

An employee may rely upon the assumption that the appliances furnished him are safe in absence of notice to the contrary. Kain v. Smith (I882) 89 N.Y. 375; for example that a car is in good condition and fit for the reception of the load placed upon it. Bushby v. N.Y.L.E.& W. (I887) I07 N.Y.374.

To cite other cases under the rules given; the corporation is bound to protect its employees by providing strong and safe buffers although they do not own the cars, DeKay v. N.Y.L.E.& W. I9 Week. Dig. 479.; It is the duty of the corporation to keep hand brakes in good condition and repair, so held sustaing recovery of brakeman injured by the breaking of a brake wheel, the court holding that by reasonable care the defect could have been discovered upon inspection, Disher v. N.Y.C.& H.R.R R. 2 St.Rep. 276.; but the corporation is not bound to furnish engines suitable and adequate in power for every emergency, so held when engine could not be stopped in time to avoid striking yard master whose foot

was caught in the rails., Bajus v. Syr. & Bing. R.R. I03 N.Y. 3I2. The corporation must properly prepare cars for shipment, so held in a case of breaking of a defective stake in a lumber car by which a brakeman was injured. Bushby v. N.Y.L.E. & W. I07 N.Y. 374 affirming 37 Hun I04.

INJURIES TO EMPLOYEES RESULTIMG FROM NEGLIGENCE OF CO-SERVANT.

The master is bound to furnish competent co-servants to assist and direct his employees, (employment of engineer who cannot read a misdemeanor, # 418 Penal Code. "Any railroad corporation may employ any inhabitant of the state, of the age of twenty one years, not addicted to the use of intoxicating liquors as a car driver or conductor, or in any other capacity, if fit and competent therefor" # 42 R.R.L.) and having performed this duty the employer is not liable for injuries to its employees resulting from the negligence of a co-servant, unless as has been shown previously (p. 5) the employer was guilty of concurrent negligence.

A distinction is made in law between a vice-principal and an employee, the master being liable for injuries caused by the negligence of the former, but the test to determine whether one acts as an employee or as a vice-principal is not uniform in the different states and in this state has undergone modifications; the true rule now in this state that an employee, while employed in the performance of employers duties is a vice-principal without regard to grade or rank or common object of service with a co-employee. Filke v. N.Y.C.& H.R.R.R. 53 N.Y. 549 p.553. Prof. Pratt also cites in support of this proposition in his sheets on Negligence, McCosker v. R.R.Co. 84 N.Y.77; Slater v. Jewett, 85 N.Y. 61; Hussey v. Coger, 112 N.Y. 614; Byrnes v. RR.Co. 113 N.Y.

Filbert v. D.& H.C.Co. 23 N.E.II04, showing to what extent the rule has been followed. It is well to note that under this rule foremen of gangs of workmen, section bosses and bosses of wrecking trains are classed as co-employees. Beilfus v. N.Y.L.E.& W. 29 Hun, 556; Hansen v. Trustees N.Y.& Brook. Bridge, 27 Week. Dig. I86; Neubaur v. N.Y.L.E.& W. , I0I N.Y. 607.

Servants of different roads are not co-servants although both companies use the same tracks and yards. Sullivan v. Tioga R.R. II2 N.Y. 643; Murphy v. N.Y.C.& H.R.R.R. 44 Hun 242; nor is a car repairer of a railroad a co-servant with a car cleaner in the employ of a car company with which the railroad has contracted for the use of its cars. Harold v. N.Y.C.& H.R.R.R. I3 Daly 89.

We now come to the question, who are co-servants? It is safe to say that nearly all of the employees of a railroad corporation with the exception of the governing heads of departments who may be classed as vice-principals, and those who are engaged in mere clerical work come under this common head. For example the following have been decided to be co-employees; one employed to signal trains to stop on account of blasts, and an engineer,Kennedy v. Manhattan Ry. 33 Hun 457; construction train hand and section hand, Carr v. No. Riv. Cons. Co. 48 Hun 266; track repairer and switchman although acting under orders from different men

Slatterly v. N.Y.L.E.& W. 4 N.Y.Supp. 910; car cleaner and trainman,; track repairer and those in charge of train on which he rode, Russel v. Hud. Riv. R.R. 17 N.Y. 134; brakeman of one train and the engineer of another, Wright v. N.Y.Cent. 25 N.Y. 562. This line of cases could be multiplied almost indefinately and made to embrace almost all employees of railroads but for a longer list the reader is referred to I Thomp. Neg. 1038.

Respondeat Superior.

The doctrine that the master is liable for the acts of his servant when engaged in the masters service and acting under his orders is of deservedly ancient origin, being founded upon the sound principles of common sense and patent to the most unlearned. The doctrine that the master is liable for intentional and willful injury done in the course of business by the servant is not so old but deserving of equal respect. In the year I800 it was decided in the case of McManus v. Crickett that the master was not liable for willful injury done by the servant in the course of his masters business; this case was one of a driver who after discharging his mast er willfully ran into and injured another vehicle and the reasoning in the case was based upon Rolle' s Abridgment was that by the act of using his master's carriage as a means of injury the servant acquired a special property in it. Thompson in his discussion of this case terms the reasoning "fantastical" which seems singularly appropriate, and proceeds to show its absurdity by the example of a brakeman ejecting a passenger from a car; if the ejection be proper, then of course the master is not liable for the action of his servant was proper, and if on the other hand the ejection was improper then the brakeman acquired a special property in the car and the master had nothing to do with the case.

This eightheth century doctrine has given place almost universally to the opposite theory as the following recent

decisions will show. It was decided in Quinn v. Power (I882) 87 N.Y. 535 that the master is liable for the negligence or misfeasance of his servant while the latter is acting within the scope of his employment and in his master's business although the act is contrary to the master's descretion and a violation of duty; in Harlinger v. N.Y.C. & H.R.R.R. (I882) I5 Week. Dig. 392 (affirmed 92 N.Y.) the court decided that when a car porter acting in the general line of his duty, removes a trespasser while the train is in motion, the corporation is liable even though the porter acted from violence of temper. This line of cases might be extended almost indefinataly. Thus the corporation is liable for the act of its brakeman in kicking a boy off the car steps while the train was in motion, (Hoff man v. N.Y.C.& H.R.R. 87 N.Y.25) for conductor pushing plaintiff off car over during a squabble over payment of fare although the act was " flagrant, reckless and illegal" (Flynn v. Central Park &c R.R. (I883) 49 Super. Ct. 81. The most extreme case under this rule seems to be McKernan v. Manhattan Ry. Co. (I887) 54 Hun 433 where a ticket seller on an elevated railroad came out of his ticket box and threw a passenger down stairs and the act was decided to be within the line of his business.

The above cases show plainly how far the old rule of McManus v. Crickett has been changed and to what extent the courts have gone in the new direction.

In the case of injuries done by a servants of a contractor employed to perform a specified piece of work for the corporation the rule stated before does not apply but is reversed and the contractor is held liable and not the corporation. This doctrine hardly needs explanation but for it is readily seen that the servants of the contractor are not servants of the corporation and consequently are not subject to its control, the corporation has no descretion in their selection and between the parties there is no privity of contract.

The test to determine whether one who renders service to another does so as a contractor or not is to ascertain whether he renders the service in the course of an independent occupation representing the will of his employer only as to the result of his work and not as to the means by which it is accomplished. Hexamer v. Webb IOI N.Y. 377.

CASES ILLUSTRATING THE LIABILITY OF RAILROADS FOR INJURIES TO PASSENGERS.

In considering the question of the liability of railroads for negligence resulting in injuries to passengers it is to be remembered that reasonable care, prudence and dilligence are required but that the company is not considered in the light of an insurer of the lives of its passengers or of their safety, (Palmer v. Pa. Co. III N.Y.488)and that the care required of the company in the transportation of passengers does not apply in its strictness to the safety of the platforms, approaches and stairways of the stations , ordinary care in this respect being all that is required. Kelly v. Manhat. Ry. II2 N.Y.443. However a passenger has the right to presume that while on the platform of a station he is not exposed to unnecessary danger. Dobiecki v. Sharp 88 N.Y. 203.

The general rules governing this subject having been given in other connections, decisions in particular cases will be next considered.

Mail agents are entitled to the same protection as passengers. Seybolt v. Lake Erie &c R.R. 95 N.Y.562, affirming 3I Hun I00.

A passenger may recover for injuries resulting from the falling of a portion of a berth in a sleeping car, DeLongv.D.L.& W.

37 Hun 282, but not for injuries resulting from the falling of an article placed in the rack above him by another passenger, Morris v. N.Y.C.& H.R.R.R. I06 N.Y.78.

The company is not bound to remove snow and ice from the car platform or to sprinkle ashes thereon when the train is running at night through a continuous storm. Palmer v. Pa.Co. III N.Y.488.

Running a train through or into a station or between two passenger t rains at a high rate of speed at a time when there are passengers alighting from trains or crossing the tracks is negligence, (Wandell v. Corbin 38 Hun 39I,) and it is a question for the jury whether a passenger who crosses the tracks under such conditions without keeping a sharp lookout is guilty of negligence. Hirsch v. N.Y.C.& H. R.R.R. 6 N.Y.Supp. I62. The running of trains as above is negligence even though the engineer was disabled at the time by being struck by the lever which slipped from its place after having been turned. Parsons v. N.Y.C.& H.R R.R. II3 N.Y.355.

The company must take precautions to prevent injuries to passengers by the carelessness of persons permitted upon its premises other than its servants, as for example where passenger is struck by a mail bag thrown off by a post office employee when it is shown that the company had constructive knowledge of this manner of discharging the mails and the agents actual knowledge, no precautions being taken to warn passengers or to protect them. Carpenter v. B.& A.R.R. 97 N.Y.494.

There is no question for the jury when a passenger is ejected for refusal to pay his fare, Johnson v. N.Y.O.& W.R.R. I4 Week. Dig. 495, but a passenger in possession of his ticket cannot be ejected because he passed through the wrong gate to board the train. Huerstel v. N.Y.& H.R.R. I City Ct. I34. Evidence being given that a passenger was ejected within five rods from a crossing and within thirty rods from a dwelling it is for the jury to say whether the dwelling was "near" within Sec.33 of Gen. R.R.Act. Loomis v. Jewett 35 Hun 3I3.

The purchase of a ticket gives a passenger no right to take any particular train. A passenger must present himself in time to take his train and has no right to delay it, so starting the train on time is not negligence even though there are passengers wishing to take it. Paulitsch v. N.Y.C.& H.R.R.R. I02 N.Y.280.

Boarding or leaving train while in motion is generally and presumedly negligence per se. Salomon v. Manhat.Ry. 437. It seems that a person boarding a train moving at the rate of from four to six miles an hour is guilty of negligence even if he is invited to do so by the conductor Hunter v. C.& S.V.R.R. II2 N.Y.37I. But if the motion of the train was so slight that the passenger could probably have taken it with as much safety as if it were standing still the fact that the train was in motion does not make the act negligent. Brooks v. N.Y.L.E.& W. 2I Week. Dig. 484.

It is negligence for the servants of a railroad to slack up a train instead of stopping it to allow a passenger to alight and it is culpable negligence for an officer of the company to induce a passenger to alight while the train is in motion, Bucher v. N.Y.C.& H.R.R.R. 98 N.Y.128, and an assurance by the brakeman that it is safe for passenger to alight from a moving train excuses the passenger's negligence in so doing. Abbey v. N.Y.C.& H. R.R.R. 20 Week.Dig.37.

The servants of the company must give a passenger a reasonable time in which to alight with his packages and when the train is started before he has such reasonable opportunity resulting in his personal injury it is negligence, Simpson v.R.W.&c.R.R.R.48.Hun 113, so the starting of the train while plaintiff is alighting therefrom held sufficient to go to the jury on the question of defendant's negligence, Bucher v. N.Y.C.& H.R.R.R. ante.A sudden jerk of the train after it has stopped, or nearly stopped, by which a passenger is injured is negligence. Glidden v. N.Y.C.& H. R.R.R. 20 Week. Dig. 313; Bartholemew v. N.Y.C.& H.R.R.R. 102 N.Y. affirming 20 Week. Dig. 186.

Whether a passenger riding in the baggage car with the knowledge of the conductor when no rules were posted prohibiting it as required by Sec. 46 Gen. R.R.Act, and the danger from the injury actually sustained was no greater than in ny other portion of the train , is guilty of contributory negligence is a question

for the jury. Webster v. R.W.&c. R.R. 40 Hun 161.

When no seat is furnished a passenger and he remains with others on the platform of the car without objection and is thrown off by a sudden lurch of the train the facts do not as a matter of law establish contributory negligence. Werle v. Long Island R.R. 98 N.Y. 650.

FINIS.