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NO. 1

MARTHA A. CASE VS THE RAILROAD

On Wednesday of last week the motion for a new trial in the case of William Case and wife against D. L. & W. R. R. Co. was argued before Judge Herring and on Saturday he filed an opinion refusing a new trial. This suit has attracted much attention, because it has been tried in court, the first time occupying a week, and the second time four weeks, and because Judge Herring reversed Judge Ikeler's ruling at the first trial, and granted a new trial. At the first time, it was submitted to the jury who found a verdict of \$5000 Mrs. Case for injuries to herself, \$3000 for Mr. Case for loss of his services. The defendant filed a motion for a new trial, and Judge Ikeler died before the motion was argued and it came up before Judge Hg., who granted a new trial as above stated.

There has been so much criticism of Judge Herring's action refusing to continue the case, and a directing a verdict for the defendant, that it is due to the court that an opinion filed on Saturday be published so far as it contains a statement of facts.

As to the refusal to continue the case on motion of the plaintiff's counsel, because Mrs. Case was sick and unable to be present, the opinion says:

"Six times, before and after the trial, plaintiff's counsel, moved to continue this case on the ground that Mrs. Case, one of the plaintiffs, was sick and unable to attend the trial. The affidavits and testimony as to her physical condition showed that she was suffering from 'severe or intense nervous prostration'; that ever since former trial in February, 1898 these attacks of nervous prostration, although intermittent, 'came on her with renewed severity' at her condition 'now is worse than a ago' and 'her diseases are of such a nature that she 'will never get well'; that prior to 1894 she weighed from one hundred ninety to two hundred pounds; that now is a poor emaciated creature, whom friends cannot recognize."

Dr. Howard, her attending physician, in attempting to catalogue infirmities says: "She is suffering from each of the bladder, enfeebled circulation of the blood, nervous prostration, constipation, hemorrhage, indigestion, falling of the womb, uterine troubles."

It was impossible to see, even remotely, when a person thus afflicted, might be able to undertake a journey from Michigan to Pennsylvania to testify in a law suit. The very fact that ever since 1894 she has been growing worse instead of better, rendered still more remote the chance of her ever being well enough to attend the trial.

Defendant's counsel insisted a continuance on the ground that the testimony of Mrs. Case had been taken on two former occasions; first on a rule take her depositions and afterward, a year later when she appeared at the trial. On both occasions she was examined and re-examined at great length and her testimony written out, that taken at the trial covering over sixty pages of type-written matter. It was urged that the cases of the plaintiff could not be prejudiced by absence of Mrs. Case, if her testimony, as taken at a former trial, could be read in evidence.

To the Court it seems that Mrs. Case had been given a doubt opportunity to testify to every fact within her knowledge, material to the issue; and that reading of this testimony in the present trial would fully preserve all her rights.

The cases had been pending for almost four years, and had been the only cases open for trial, all others having been settled or consigned by consent of both parties.

For these reasons the motion to continue was over-ruled and after mature consideration we can discover no mistake in those rulings.

STATEMENT OF FACTS.

One of the plaintiffs, Martha A. Case, bought a railroad ticket at Hillsdale, Michigan, for Bloomsburg, Pennsylvania, over the Lake Shore and Michigan Southern Railroad as far as Buffalo, and the Delaware, Lackawanna and Western Railroad from Buffalo to Bloomsburg by way of Scranton. The ticket was limited as to time and under the regulations of the Delaware, Lackawanna & Western Railroad was for one continuous passage to Bloomsburg, without stop over privileges. It bore on its face this notice, "No agent or employe has power to modify this contract in any particular."

The plaintiff reached Scranton at 3:30 in the afternoon of August 28th, 1894. The next train for Bloomsburg was scheduled to leave Scranton at 6 p. m. Instead of waiting for this train, Mrs. Case waited a few minutes after her arrival, took a local train running only as far as Kingston, an intermediate station. At Kingston she left this train and took another for Bloomsburg at 6:55 p. m.

Shortly after leaving Kingston, she says, she handed her ticket to the conductor and said to him, "My ticket calls for Bloomsburg but I want to get off at Berwick, will you set my trunk off there please?" The conductor took the ticket but made no reply, folded it

up and handed it back to her. Shortly afterward he came back, according to her testimony and said, "I will take your ticket now and see what I can do." She then gave up the ticket and upon his inquiring for the baggage check, reluctantly gave that up. She nowhere testifies that the conductor agreed to let her off at Berwick.

The train reached Berwick at eight o'clock, stopped long enough to allow plaintiff's baggage to be put off and all passengers to alight. The plaintiff and the conductor both agree that it stopped about two minutes. Mrs. Case did not alight with the other passengers for Berwick.

Just as the train was starting to leave Berwick station, Mrs. Case went forward to the brakeman and said, "Where is the conductor, find him quick, he was to set me off here." The brakeman hurried to the smoking car ahead, brought back the conductor, and the plaintiff twice repeated, "Why didn't you set me off here, this need not have been, the station was not announced."

The conductor insisting that the station had been announced pulled the bell cord and stopped the train. She then of her own motion went out on the platform, down the steps, the conductor helping her to the ground and as she says, "in a gentlemanly manner" escorting her to the rear end of the car. There he pointed out the light in front of the station telling her to "go for that light." He then jumped on his train and it moved off.

After repeated efforts on the part of counsel to have Mrs. Case fix the point where she alighted, she declined even to approximate it. The only thing that she would say was that the train had "passed the depot." Two of plaintiff's witnesses, Jennie Blecker and Mrs. Averill, testified that they were calling that evening at the lock tender's house on the south side of the track, about forty feet below the station platform. Hearing the eight o'clock train start, go a short distance beyond the house and then stop, they went out of the house and stood at a point where they could look down the track. They saw the rear end of the train about half way between the smoke house and the lock tender's house, about fifty feet from where they stood.

"A lady at the hind part of the car was just about in the act of starting to walk as the train was starting to move away." They stood there and "looked at the lady a little while." They saw her walking toward them until she passed them within a few feet. "Going toward the small platform." They saw her pass safely the switch bars which were below where they stood.

They then crossed the track and when they next noticed her, she was in the act of falling between "the small platform" and the big platform. Another of plaintiff's witnesses, Al Chamberlain, testified that he saw her lying between the two platforms; another, Harry Rhodes, that he saw her from the rear window of the train as it moved away "standing on the little platform."

What is spoken of in the evidence as the "small platform" is in fact no platform, but as described by plaintiff's engineer, a plank covering for surface drain pipes, being about seven feet wide and nine feet long, elevated about five inches above the ground, and located about seven feet beyond the station platform. The ground between "the small platform" and the end of the station platform was smooth and clear of obstructions. The step from the ground to the station platform at its westerly extremity was about ten inches high.

This "small platform" was distant from the electric arc light suspended in front of the bay window of the station one hundred and seventy-six feet. It was distant in the opposite direction from another electric arc light two hundred and eighty-six feet. The latter light was elevated above the level of the platform about forty-five feet. In other words, "the small platform" was located about mid-way between two arc lights with no obstruction to cut off the rays.

The accident occurred about eight o'clock on a clear summer evening in the month of August.

But notwithstanding the electric lights and whatever natural light there may have been at eight o'clock on that clear summer evening, Mrs. Case testified that "it was very dark", so dark that she "could not see her own feet, nor the ground, nor the rails, could not see where she was stepping."

She admitted wearing a "thin loose veil," and hurried along as fast as she could "to meet friends" whom she "expected at the station."

When her deposition was taken a year before the trial she testified, "I did go on a run." This testimony, she corrected at the trial, by saying, "I did not go on a run, I hurried as fast as I could."

Mrs. Case nowhere testifies that she asked the conductor or brakeman to back the train to allow her to alight on the platform, nor that she asked either conductor or brakeman to escort her back to the platform.

CONCLUSIONS OF LAW.

Upon the facts as proved and shown by the plaintiff's own admissions and the undisputed evidence in the case, the Court felt it its duty to direct a verdict for the defendant.

It is too plain for argument that the plaintiff, Martha A. Case, left the defendant's train voluntarily.

There is not a particle of testimony to show

that she was ejected or forced to leave against her will. Every act of hers, which speaks louder than mere words, is proof, positive, that it was her desire that the train should be stopped and she be permitted to alight. Else why did she rush forward to the brakeman, call for the conductor, and complain because she had not been "set off at Berwick?"

It is midsummer madness to contend that she was ejected or forced to leave the train against her will. No sane man could reach such a conclusion after reading her testimony. Having left the train voluntarily at a point beyond the regular station platform, without requesting the trainmen to escort her back or back the train, she assumed the risk of reaching the station in safety and forfeited her rights as a passenger.

But assuming that it was so dark, where the conductor left her, that she couldn't see the ground, her own feet, or the rails,—couldn't see where she was walking—did she use ordinary care in "hurrying as fast as she could" through inky darkness, with a veil over her face?

She was a person of mature years, a "strong, healthy, robust woman," she knew she was in a strange place, on the railroad track, in pitch darkness. Yet she hurried as fast as she could to meet her friends at the station without raising her veil or asking an escort.

In voluntarily leaving the train where she did, in darkness such as she describes, and hurrying forward over unfamiliar ground with a veil over her face, she must be held to have been guilty of contributory negligence.

There is another phase of the case which the Court feels called upon to discuss. Only two witnesses saw the plaintiff fall. They are Miss Blecker and Mrs. Averill. They were subpoenaed and called by the plaintiff. They saw the plaintiff first at the rear end of the car where she was left by the conductor, she was walking toward them.

They saw her pass the switch bars in safety and continue up the track toward the "small platform." "As she stepped from the small platform to the ground she plunged forward and fell."

It will be remembered that Mrs. Case herself testified that she "could not see that the platform was elevated." Here was a clear summer evening in August about eight o'clock. The unobstructed rays of two arc lights streamed upon this platform from opposite directions; and yet Mrs. Case could not see that the platform was elevated.

There is no allegation anywhere that her vision was imperfect. The only inference is that she did not use her eyes as an ordinarily prudent person would under similar circumstances and was therefore guilty of contributory negligence. There is no evidence that she even raised her veil.

If in stepping from the platform to the ground under the mistaken impression that it was not elevated, she plunged forward and fell, she can blame no one but her self, for if she had looked, she could not have helped but see, that the platform was elevated. A person is bound to see what their eyes will disclose, by the ordinary and proper use of them.

"A railroad Company is not liable to a passenger for an accident which the passenger might have prevented by ordinary attention to his own safety, even though the agents in charge of the train are also remiss in their duty. They are not insurers against the perils to which a passenger may expose himself by his own rashness or folly." Railroad Company vs. Aspell 23 P. S. 149.

Thus far we have considered the case with out reference to certain facts disclosed in the evidence, which tend to show that the defendant was not negligent.

The plaintiff's right to recover in this case depends upon the liability of the defendant to respond in damage for its negligent acts.

The burden is upon the plaintiff to establish the facts from which the inference of such negligence can be legitimately drawn.

When a passenger enters into a contract with a Railroad Company by purchasing a ticket to carry her to a given distance, and the ticket is a limited one, calling for a continuous journey without stop over privileges; neither passenger nor conductor of the Railroad Company can alter or change that contract so as to make the company liable for any failure in alighting the passenger at any intermediate point; especially when the ticket carries on its face the notice, "No agent or employe has power to modify this contract in any particular."

The contract between Martha A. Case and the defendant Company was for carriage from Buffalo to Bloomsburg, evidenced by a first class limited ticket requiring a continuous journey with no stop over privileges. The defendant was therefore under no legal or contract obligation to Martha A. Case to announce the station, Berwick, by calling in the car or any other way; Berwick being an intermediate station between Buffalo and Bloomsburg, and not a junction point where it was necessary to change cars.

Taking Mrs. Case's statement therefore as true that the station Berwick, was not announced, the failure to announce the station was not negligence on the part of the defendant. Nor was it negligence to stop the train at the instance of the plaintiff and allow her to exercise her own free will in voluntarily

leaving the train at a point beyond the station platform, and before reaching her destination, Bloomsburg.

"If a passenger is negligently carried beyond the station where he intended to stop and where he had a right to be let off; he can recover compensation for inconvenience, the loss of time, and the labor of traveling back, because these are the direct consequences of the wrong done to him." Railroad Company vs. Aspell 23 P. S. 150.

Assuming that Mrs. Case intended to stop at Berwick and had a right to be let off at that station, and was negligently carried beyond it, it was her duty to remain on the train until it reached the next regular stopping place, and then recover compensation for the inconvenience, loss of time, and the labor of traveling back to Berwick; but when she chose to disregard this duty and saw fit to have the train stopped, and voluntarily alighted at a point of her own selection, she cannot afterward set up that such point was an unsafe place to deposit a passenger.

Under the evidence in this case Mrs. Case was entitled to one continuous ride from Hillsdale to Bloomsburg. If she voluntarily left the train at any intermediate point, she forfeited her rights as a passenger, and if injured after leaving the train through no other act of the defendant; she cannot hold the defendant liable for negligence in allowing her to alight at the place of her own selection.

For these reasons the motion for a new trial is over-ruled and a bill sealed for the plaintiffs.

BY THE COURT
GRANT HERRING, President Judge.

Court Proceedings.

Court was in session a short time on Saturday afternoon. The following was entered on the Court minutes: In re petition to change, alter or amend, make anew, etc., the Deed Indices, the Court order and direct that a full and complete new Indices to be made and prepared, White's method of indexing to be used under supervision of C. B. Ent at the expense of the county, and that C. B. Ent enter into written contract with G. S. White for the purchase of said indices."

Hon. R. R. Little took the oath of office as President Judge before C. B. Ent, Register and Recorder, on Saturday Dec. 31st. There was a short session of court on Monday Jan. 2, at which he presided for the first time, but no business was transacted.

Court convened Tuesday afternoon at four o'clock with His Honor, Robt. R. Little and Associates Fox and Kurtz on the Bench. Hotel license of B. D. Morton in Greenwood transferred to Calvin Derr.

In re-petition to change, alter or make anew the Deed Indices of Columbia County. Petition of County Commissioners to suspend order etc. Order made Dec. 13, 1898 stayed until Monday of next term. Copy of petition to be served on C. B. Ent and also one mailed to G. S. White.

Bond of Annie M. Skeer, Guardian of Flora, Lloyd and Joseph Skeer in sum of \$40000 for each Ward filed.

Now January 3, 1899 all the Judges of the several courts of Columbia county having met at the Court House proceeded to make appointment of court crier, whereupon John S. Williams, of Bloomsburg was appointed to that position and the compensation fixed at \$2.50 per day; as heretofore paid to that officer. BY THE COURT.

Mrs. M. J. Hennessy.

A very sad occurrence, which it becomes our duty to chronicle, is the death of Mrs. M. J. Hennessy, which took place at her home on West Main street, Tuesday afternoon, from a sickness, with which she was taken in the early part of December. She contracted a heavy cold, followed by the gripp, which is so prevalent at present, and terminating with that almost incurable affliction, spinal meningitis.

The deceased was a daughter of the late Peter Gross, was aged thirty three years, and is survived by a husband and two children, a boy and a girl, aged four years and six months, and one year and two months respectively. She was a devoted wife and kind mother, and her demise is greatly mourned.

The funeral services will be conducted by Rev. A. J. McCann tomorrow morning at ten o'clock, and the remains interred in Rosemont Cemetery.

12th Regiment Soldiers Tired of War.

The effort that is being made to re-organize the Twelfth Regiment, N. G. P., is not meeting with much success. At Lock Haven it has about been decided to abandon the attempt to re-organize Co. H. The old members, who did camp duty during the Spanish war, say that they have had all the soldier life that they desire.

—A T—

Auction!

The entire stock of Gidding & Co. (formerly Jones & Walter), embracing about Six Thousand Dollars worth of

FINE SHOES,

Boots and Rubbers, for men, boys, women, misses and children, a stock gathered together from the very best makers in the United States.

The firm of Gidding & Co. is going out of business. The store is to be given up February 1st. Avail yourself of this splendid opportunity to purchase Fine Footwear at a mere trifle. Every pair will be sold to the highest bidder—for cash.

SALE COMMENCES

Saturday Afternoon, Jan. 7th.

at 2 o'clock, and Saturday evening, at 7 o'clock, and will continue every day until the stock is disposed of.

SEATS WILL BE PROVIDED FOR LADIES.

Those wishing to purchase at private sale can come from 7 a. m. until 2 p. m., when the sale commences. Remember, every day at 2 p. m., every evening at 7 p. m., until the stock is sold.

GIDDING & CO.

J. S. Williams, Auc.

SPECIAL NOTICE.—The clothing store will also sell everything, but at private sale, at and below maker's cost.

The Leader Department Store.

Special Sale of

Muslins and Counterpanes.

Lonsdale Cambric

In taking inventory we found some of our Muslins and Cambrics had become slightly soiled and mused in handling, and then we had too many brands. Every woman knows what Lonsdale Cambric is—one of the standards of the country. We have sold thousands of yards of it for 12c. You may have 1,000 yards at 10 YARDS FOR \$1.00.

Lonsdale Muslins, from 9c. to 10 yards for 75c.

CANTON FLANNELS.

Here are a few things, taken at random, from the special stock we have laid out for our January sale.

A 27 inch Bleached Canton Flannel, sold everywhere for 5c. 10 YARDS FOR 37c.

A 27 inch Unbleached Canton Flannel, sold everywhere for 5c. 10 YARDS FOR 37c.

A 30 inch Bleached Canton Flannel, sold everywhere for 9c. 10 YARDS FOR 70c.

A 30 inch Unbleached Canton Flannel, usual price, 6c. 10 YARDS FOR 50c.

We also show a special line of heavy Shaker Flannels at 6, 8 and 10c. Worth more money, but we want to move them.

RED FLANNELS.

During January we will give you 10 per cent. reduction on all our Flannels—red, white and gray.

BUTTER DISHES.—Look in our Fourth St. window. We give you a 5-lb. butter crock for 5c. You have paid 10c. for these and thought you were getting a bargain.

PARIS CORN.—None nicer—11c a can. Usually, 2 for 25c.

CALIFORNIA FRUITS.—We have a special lot of Silver Cord fruits. Rich, heavy syrup, 20c. the can.

FIGS.—For cooking or cake making, 2 lbs for 15c. Try them, but keep them away from the boys, or they will tell you they are good for eating also.

Fruit of the Loom

What we said about quality of Lonsdale Cambric is equally applicable to Fruit of the Loom. In fact, some years ago, ladies did not consider themselves well dressed unless their garments were made of this Cambric. Thoroughly honest and reliable. We have sold cases of it at 12c. We will sell 1,000 yards at 10 YARDS FOR \$1.00.

Fruit of the Loom Muslins, 10 yards for 70c.

The Leader Store Co., Ltd.,

Fourth and Market Sts.