

Case No. 9,561.

MILLER v. BALTIMORE & O. R. CO.
 {3 Cin. Law Bul. 151.}

Circuit Court, N. D. Ohio. 1878.

RAILROAD COMPANIES—INJURY TO
 EMPLOYEE—FELLOW SERVANT.

At law.

Homer Goodwin, for plaintiff.

E. J. Estep and Judge Dickey, for defendant.

Before BAXTER, Circuit Judge, and WELKER,
 District Judge.

BAXTER, Circuit Judge. We have had this case under consideration, and have addressed our inquiries mainly to the principal point in the case. The plaintiff sets forth that he was an employe on the road of the defendant, serving under and subject to the orders of the engineer, and through the negligence of the engineer he was injured. Upon this question it is supposed that there is a difference in the law as administered by this court and the courts of this state; and it is argued that the federal courts, upon this question, are not bound by the adjudications of the supreme court of Ohio. We have not considered that question, nor have we reached any conclusion with reference to the order being suddenly made, an order directing the performance of a hazardous duty; nor have we considered the question attempted to be made as to the imperfect or defective machinery. We think the opinion in the case of Cleveland, C. & C. R. Co. v. Keary, 3 Ohio St. 201, is the ablest, clearest, and most satisfactory discussion of this principle that is to be found in the books anywhere; and we have determined to adopt and adhere to the principles announced in that opinion, as the rule which will govern this court in all future cases involving similar questions. With the principles announced in that case

counsel are supposed to be familiar, and it is not necessary to repeat them here. It is sufficient to say that this court, in the administration of the law upon questions of this kind, will stand squarely upon the principles announced by Judge Ranney in that case. The demurrer will, therefore, be overruled.

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