lieve from the evidence that the plaintiff, in jumping from a moving train at the station of Stringtown, at the time he received the injuries complained of in this cause, was doing that which was obviously dangerous to a person of ordinary prudence, then the plaintiff cannot recover, though he was invited or instructed to so jump from said train by defendants' servants or agents."

Extended comment is not needed to demonstrate, not only that the instructions given were in harmony with the views of counsel as now stated in the brief, but that they clearly and fully stated the law, so that the jury could not possibly have misunderstood their duty in the particular to which the instructions are applicable. The completeness of the charge in this regard is also a sufficient refutation of the errors based upon the refusal of the court to give several requests of the receivers upon this subject. The instructions given met all the different phases of the evidence, and no additional light would have been given the jury by a repetition of the same thought in the forms used in the requests preferred, but not given.

Exception is also taken to the ruling that contributory negligence is a defense which will not avail a defendant unless sustained by a preponderance of the evidence. That it is a matter of defense is the settled rule in the courts of the United States, and why there must not be a preponderance of evidence to sustain it we are at a loss to perceive. If the argument of counsel was well founded, the rule would be that, if there was evidence tending to show contributory negligence, a party injured could not recover, which is certainly not the law in any forum. Unless, upon the entire evidence, the jury can fairly say that a plaintiff has, by negligence on his part, contributed to the injury complained of, his right of recovery cannot be defeated on that ground; and this is the equivalent of the proposition that the fact of contributory negligence must be established by a preponderance of the evidence.

It is also said that it was error to refuse a request to the effect that the jury could not award damages to plaintiff "for future loss that plaintiff may sustain in consequence of his injury received by himself at the time he alighted from the train in question." In argument, it is said that there was no evidence to sustain a finding that there would be damage in the future, and hence plaintiff was not entitled to an award therefor. If this was the point sought to be covered by the request submitted, the language used therein is but illy fitted to express the idea. If the request had been given, the jury would probably have understood it to mean that they could not award damages for future loss caused to plaintiff by the injury received, but must confine the award to the damages received in the past, which would clearly have been an erroneous statement of the law. The record shows that the defendant in error, when upon the stand as a witness, testified that at that time he had not regained the full use of his arm; that he could not use it without causing pain; and that the rotatory motion of the arm was impaired. There was evidence, therefore, tending to prove a continuing injury, and the damage caused thereby in the future was a proper element to be considered in the assessment of the damages, and the court, therefore, did not err in

refusing to give the instruction in question. We have thus considered all the material points covered by the errors assigned, and do not find therein any sufficient ground for reversing the action of the trial court.

The judgment is therefore affirmed, at cost of plaintiffs in error.

EDDY *et al.* v. LAFAYETTE *et al.*

(Circuit Court of Appeals, Eighth Circuit. February 15, 1892.)

1. RECEIVERS OF RAILROAD COMPANIES—SUITS WITHOUT LEAVE OF COURT.
Act Cong. March 3, 1887, § 8, (24 St. p. 554,) authorizing suits against receivers of railroads without special leave of court, was intended to place such receivers upon the same plane with the railroad companies, both as respects their liability to be sued for acts done while operating railroads, and as respects the mode of service of process. *Central Trust Co.* v. *St. Louis, A. & T. Ry. Co.*, 40 Fed. Rep. 426, followed.

2. SAME—SERVICE OF PROCESS IN INDIAN TERRITORY.
For injuries committed in the Indian Territory, receivers sued therein are properly served by delivering a copy of the summons to one of their station agents in charge of a railway station therein under the Arkansas laws, made applicable to the Indian Territory, providing that such service is sufficient to confer jurisdiction when defendant is a railway company or a foreign corporation.

3. SAME—OBJECTIONS TO JURISDICTION—WAIVER.
Receivers of a railway, in an action against them in the Indian Territory for an injury committed therein, served with summons by delivering a copy to one of their station agents therein, by answering on the merits and going to trial after motion to quash the service is overruled, will not thereafter be permitted to question the jurisdiction of the court. *Harkness* v. *Hyde*, 98 U. S. 476, distinguished.

4. FIRES SET BY LOCOMOTIVES—PRESUMPTIONS.
In an action in the Indian Territory against the receivers of a railroad to recover for hay destroyed by a fire set by defendants' locomotive, where it appears that one of plaintiffs is a member of the Creek Nation, and that the hay was cut and gathered by her on Creek lands, it will be presumed, in the absence of a contrary showing, to have been lawfully harvested.

5. SAME—PARTIES.
Hay destroyed by a fire negligently set by defendants' locomotive was harvested by the occupant of the land under contract with another, whereby he agreed to advance the requisite funds, the former to receive one-third the proceeds. *Held*, that such persons could maintain a joint action for the loss.

6. SAME.
It is no ground of defense that the contract under which the hay was harvested was invalid because made with a married woman, for, both being parties to the suit, all the necessary parties are before the court.

7. SAME—NEGLIGENCE OF DEFENDANTS.
In an action to recover for hay destroyed by fire set by defendants' locomotive, a charge that in the matter of keeping their right of way free and clear of combustible materials, and in providing their locomotives with suitable spark-arresters, defendants were only called upon to exercise "reasonable care, skill, and diligence," states the proper rule.

8. SAME.
Negligence may be imputed to a railroad company if it allows combustible material to accumulate along its right of way in such quantity, at such places, and at such seasons as renders it liable to become ignited and cause damage to adjacent property.

9. SAME.
The fact that fire is communicated by a passing locomotive is *prima facie* evidence of negligence.

10. SAME—NEGLIGENCE OF PLAINTIFFS.
It appeared that the hay was burned in ricks while plaintiffs were making hay in the vicinity, and that the men so employed were keeping a constant lookout for