

recover. The fact that he acted upon the advice or urgency or instruction of the conductor of the train will not change the character of the act. 2 Beach, Ry. Law, p. 987; Patt. Ry. Acc. Law, p. 21, § 23, and cases quoted; Railway Co. v. Schaufler, 21 Amer. & Eng. Ry. Cas. 405. The plaintiff, in stating the facts on which he relies, says that at the time of the happening of the accident the train had not stopped sufficiently for him to alight with safety and convenience, so it was obvious to him that the attempt to get off would be accompanied with danger. He further states that he was waiting until the train could come to a full stop before attempting to alight, so he knew when he could alight without danger; that the conductor nevertheless directed and required him to alight, in reckless disregard of what was due to him. This emphasizes the fact that the danger was obvious, so obvious that the instruction of the conductor was in reckless disregard of what was due to the passenger,—so much so that no man of ordinary prudence would encounter it; yet he jumped from the train. Nothing that the conductor said by way of advice or direction can relieve him of the consequence of his own act. Jones v. Railroad Co., 95 U. S. 439.

The demurrer is sustained.

COOPER v. SUN PRINTING & PUBLISHING ASS'N.

(Circuit Court, S. D. New York. September 27, 1893.)

LIBEL—EXCESSIVE VERDICT—MOTION TO SET ASIDE.

The damages which a jury may award in an action for libel being not only compensatory, but, where malice or its equivalent (gross negligence) is found, also punitive or exemplary, the court will not set aside a verdict of \$2,500 in favor of the plaintiff, a girl of 16, for a libel published in a newspaper charging her with having eloped with a married man.

At Law. Action by Caroline Cooper, an infant, by her next friend, against the Sun Printing & Publishing Association, for damages for the publication of a libel in the Sun newspaper of October 3, 1891, charging the plaintiff, a girl of 16, and a resident of Danbury, Conn., with having eloped with Charles W. Bennett, a married man. The jury returned a verdict for the plaintiff for \$2,500. Motion to set aside verdict as excessive. Denied.

Thomas E. Rochfort, for plaintiff.

Franklin Bartlett, for defendant.

LACOMBE, Circuit Judge. That in actions for libel the damages which a jury may award may be not only compensatory, but, where malice or its equivalent (gross negligence) is found, may be punitive or exemplary, seems to be a proposition so abundantly settled by authority as to call for no extended discussion. The excerpts from the charge to which defendant on this motion calls attention correctly state that proposition; and, for any error in

charging, the defendant has his remedy by writ of error. The only question to be now determined is whether or not the verdict of \$2,500 was excessive. It was left to the jury to say whether or not the defendant had manifested such reckless indifference to the rights of others as would call for punitive damages, and it must be assumed that they found against it on that question. That being so, there is no way in which the court can ascertain how much of the verdict represents what they considered compensation to the plaintiff, and how much of it represents what they considered a proper punishment by way of example. Taking both elements of damage into consideration, the amount found is not so clearly excessive as to warrant the court in disturbing the finding of the jury, which, under our system of jurisprudence, is specially charged with the determination of that question.

THEBAUD et al. v. NATIONAL CORDAGE CO.

(Circuit Court, S. D. New York. September 25, 1893.)

ATTACHMENT—INDEMNITY BOND TO SHERIFF—MOTION TO CANCEL.

Where a sheriff has levied an attachment upon personal property, and, upon claim thereto being made by third parties, has required the attaching creditor to give him a bond of indemnity, the court will not cancel the bond, upon motion by the plaintiff in the attachment suit, when the rights of the third parties claimant against the sheriff have not been determined in the action.

At Law.

Action by Paul L. Thebaud and another against the National Cordage Company, a foreign corporation. The action was begun in the New York supreme court by attachment, and was removed by the defendant to the circuit court for the southern district of New York. Property in storage warehouses, which the plaintiffs claimed belonged to the defendant, was levied on by the sheriff. Thereupon, replevin suits were begun against the sheriff by various parties claimant. The sheriff demanded from the plaintiffs in the attachment suit an indemnity bond for \$150,000. The plaintiffs obtained a bond for that amount from the Lawyers' Surety Company, as surety, depositing with that company \$50,000 as cash to secure it against liability. The plaintiffs and the surety company were substituted as defendants in the replevin suits in place of the sheriff, pursuant to the provisions of the New York statute. The replevin suits were discontinued by consent, the plaintiffs in these suits consenting to a discharge of the bond of indemnity. Thereafter, the attachment was vacated. The plaintiffs moved upon affidavits setting up those facts, and also that the Lawyers' Surety Company refused to repay to them the \$50,000 deposited with it as collateral until the bond was canceled, and moved for an order of the court to cancel the bond. The sheriff replied by affidavits setting up that he was still in possession of a part of the property levied on, and that keepers' fees and the poundage of the sheriff had not been paid. He also set up the fact that he had not received a general release from the attorneys, or any of the claimants, releasing him from damage and responsibility by reason of the levy of the attachment. Motion denied.

William J. Courtney, for the motion.
Strong & Cadwalader, opposed.

LACOMBE, Circuit Judge. The motion is denied. This court, upon summary motion made in this case, should not undertake to