

special and extra trains," as the rule required him to do. "Sharp curves and other circumstances" made the running of the hand car at the point where the accident occurred extremely dangerous, and no "special care" or precaution was taken to avert the danger, other than to stop the hand car and listen for a coming train. The sharp curve in the track at the east end of the bridge, and the timber on either side of the track, made it impossible to see an approaching train for a safe distance, and the rule is explicit that "these cars [hand cars] must always be protected by a flag when a clear track cannot be seen for a safe distance." The conditions existing at the time and place of the accident, all of which were known to the men on the hand car, called for the exercise of the greatest caution, and the strictest observance of the rules applicable to dangerous conditions. The situation was rendered extrahazardous by the existence of the following, among other conditions: There was a long, high bridge and trestle to be crossed by the hand car. There was a sharp curve at the end of the bridge, which, with the timber on either side of the track, effectually obscured the view of a coming train before it reached the east end of the bridge. A coming train would be running on a down grade as it approached the bridge, and the whistle and noise of a coming train would be wafted away from the men on the hand car by the stiff wind blowing in the opposite direction to that in which the train was coming. It would be difficult to conceive of the presence of conditions demanding a stricter observance of rules, and the exercise of greater caution. It was a place that required of the men on the hand car the use of every reasonable safeguard against such accidents as that which occurred. There is no pretense that the requirements of the rules were observed by the section foreman in charge of the hand car. It is indisputable that their nonobservance contributed to, if it did not occasion, the accident; and, even if the defendant was guilty of negligence,—a question upon which it is not necessary we should express an opinion,—the section foreman was clearly guilty of contributory negligence, which precludes a recovery in this case, and the court below should have so told the jury. *Olson v. Railway Co.*, 38 Minn. 117, 35 N. W. 866; *Railroad Co. v. Reesman*, 19 U. S. App. 596, 9 C. C. A. 20, and 60 Fed. 370; *Beech*, Contrib. Neg. § 141.

The conclusion reached on the first assignment of error renders it unnecessary to consider any of the others. The judgment of the United States court in the Indian Territory is reversed, and the case remanded for a new trial.

KANSAS & A. V. RY. CO. v. WATERS.

(Circuit Court of Appeals, Eighth Circuit. September 16, 1895.)

No. 559.

FELLOW SERVANTS—FOREMAN AND SECTION CREW ON RAILROAD.

The foreman of a section crew at work upon a section of a railroad track is a fellow servant of a member of such section crew, and the latter cannot recover for an injury suffered in an accident which was caused in part by the contributory negligence of such foreman.

In Error to the United States Court in the Indian Territory.

This was an action by Charles Waters against the Kansas & Arkansas Valley Railway Company, for personal injuries. The plaintiff recovered judgment in the circuit court. Defendant brings error. Reversed.

George E. Dodge and B. S. Johnson filed brief for plaintiff in error.

William M. Cravens, George A. Grace, Thomas S. Osborne, and Thomas Boles filed brief for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. For a full statement of the accident which gave rise to this suit, see opinion in case of *Railway Co. v. Dye* (No. 558, at the present term) 70 Fed. 24. The defendant in error, Charles Waters, was one of the section crew of which Quilliam was foreman, and was on the hand car, and was injured in the collision between the hand car and the freight train which resulted in the death of Quilliam. We have just decided, in the case of *Railway Co. v. Dye*, that no recovery could be had for the death of Quilliam, on the ground that the accident was brought about, in whole or in part, by his negligence. According to the latest judgments of the supreme court of the United States, Quilliam and Waters were fellow servants; and the latter, therefore, cannot recover for injuries which resulted from the negligence of the section foreman. *Railroad Co. v. Baugh*, 149 U. S. 368, 13 Sup. Ct. 914; *Railroad Co. v. Hamblly*, 154 U. S. 349, 14 Sup. Ct. 983. The judgment of the United States court in the Indian Territory is reversed, with instructions to grant a new trial.

BRIGGS v. TOWN OF PHELPS.

(Circuit Court, N. D. New York. October 18, 1895.)

No. 3,076.

BOA FIDE PURCHASER.

One B., a brother of plaintiff, and a lawyer, residing near the town of P., New York, held several bonds of the town of an issue which had been adjudged invalid some time before. Through the agency of plaintiff, who was a farmer residing in Vermont, B. borrowed \$1,200 from one C., a neighbor of plaintiff, and deposited three of the bonds as collateral. Afterwards plaintiff took up B.'s notes, and received such collateral, and also bought more of the bonds from B., paying par, or nearly par, therefor. There were no overdue coupons on the bonds when sent to plaintiff, and for some time interest was paid, apparently by the town. Plaintiff and C., who were both men of unimpeached character, swore that they had no knowledge of any infirmity in the bonds. *Held*, that plaintiff was a bona fide holder of the bonds, and entitled to recover from the town the amount of the overdue coupons held by him.

This was an action by Orville H. Briggs against the town of Phelps, N. Y., upon coupons of bonds issued by the town. The case was tried by the court without a jury.

S. D. Bentley, for plaintiff.

James C. Smith and Thomas H. Bennett, for defendant.