

## JOHNSON v. OAKES et al.

(Circuit Court, D. Minnesota, Fifth Division. November 19, 1895.)

## MASTER AND SERVANT—RISKS OF EMPLOYMENT—FALLING ICICLES.

A railroad employé injured by the falling of a large icicle from the eaves of a locomotive roundhouse cannot recover therefor where it appears that he had been working there for some time, taking engines in and out, and consequently had equal means with defendant for observing the icicles and knowing the danger therefrom.

This was a petition of intervention filed by Charley Johnson against Thomas F. Oakes and others, receivers of the Northern Pacific Railroad Company, to recover damages for personal injuries, received while in their employment.

John Jenswold, Jr., for plaintiff.

L. T. Chamberlain, J. C. Bullitt, and J. L. Washburn, for defendants.

NELSON, District Judge. Upon motion of defendants this suit was referred to a master in chancery to hear and report findings of fact and conclusions of law, whereupon the master reported that on January 3, 1894, and for some time prior thereto, plaintiff was working for defendants about their roundhouse and yard at Duluth, Minn., cleaning and taking out engines, and doing such other work as he was ordered to do; that on the night of said day plaintiff was working under the eaves of the roundhouse, and, while so engaged, was struck by a large and heavy icicle which had been for some time suspended from the eaves, and of its own weight fell down; that defendants knew that such icicles had prior to January 3, 1894, fallen from said eaves, but carelessly and negligently omitted to have them removed; that plaintiff was ignorant of any danger or risk to be incurred where he was working, and no warning was given him thereof; that plaintiff was injured solely by the negligence of defendants, and was entitled to \$700 therefor as damages. To this report of the master, defendants filed exceptions, and plaintiff moves its confirmation by the court.

Upon due consideration of the arguments of counsel and the testimony, I am of opinion that the master erred in finding that the plaintiff's injuries were caused solely by the negligence of said defendants, and that said defendants are liable therefor. The plaintiff had equal means with the defendants of knowing the danger from icicles falling from the roof of the roundhouse. It was as apparent to him as to them, and as well known. Plaintiff's duties called him in and about the roundhouse. On the night of the injury he took locomotives into that building, and must have passed near and under the icicles many times before he was hurt; and, although he states in his testimony that he knew nothing about the condition of the eaves above him, other men who worked about the roundhouse knew that icicles formed on that building, and he must have known

that changes in the weather would cause them to form, and that they were liable to fall at any time.

The motion to confirm the report of the master will be denied, and judgment will be entered for the defendants. Ordered accordingly.

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CLAY CITY NAT. BANK v. HALSEY.

(Circuit Court of Appeals, Sixth Circuit. October 8, 1895.)

No. 296.

**ACCOMMODATION PAPER—BURDEN OF PROOF.**

The K. Co., which had obtained from the C. Bank discounts of sundry notes of its own and of individuals given to it, with the bank's knowledge, for its accommodation, deposited with the bank sundry securities, as collateral to its indebtedness, and instructed the bank that such securities were pledged to secure the payment of loans made to the K. Co. or the various persons who had made the notes, and of any deficit on the present or future indebtedness. *Held*, that the burden was upon the bank to show that a note made by one of such persons to the order of the bank, and discounted after the deposit of the collateral, was made for the accommodation of the K. Co.; and that, upon the evidence in the case, the bank had failed to show such fact.

Appeal from the Circuit Court of the United States for the District of Kentucky.

This is a bill in equity, filed by E. T. Halsey, as receiver of the Kentucky Union Land Company, against the Clay City National Bank. The bill alleged that the Kentucky Union Land Company had deposited certain promissory notes and bonds with the Clay City National Bank as collateral security for the payment of the land company's indebtedness to the bank; that collections made by the bank of a part of said collaterals, together with payments made directly to the bank by the land company, had, if properly applied, paid off and discharged all proper indebtedness to the bank; and that it was, therefore, entitled to have the remaining collaterals returned, and its obligations to the bank canceled. This relief was resisted by the bank upon the ground that all of the obligations secured by pledge of the collaterals had not been paid. The decree was in favor of the complainants, and the bank has appealed.

St. John Boyle, for appellant.

Arthur Carey, for appellee.

Before TAFT and LURTON, Circuit Judges, and SEVERENS, District Judge.

After stating the facts as above, the opinion of the court was delivered by LURTON, Circuit Judge.

The issue presented by the pleadings and assignment of error is wholly one of fact. The evidence establishes that many of the officers engaged in and about the transactions which gave rise to the controversy were officers of both corporations. The capital of the bank was small, and under the law it was prohibited from lending a sum in excess of 10 per cent. of its capital to any one customer. To avoid this provision, the land company procured the discount of notes made by one or more of its officers for accommodation, the proceeds of which were placed to its credit. Among those