

ments of the team. The wagon and the horses were Pyle's, and he was driving them. It was his act of starting them forward upon the track without looking out for the train that came from his side of the vehicle that was the active, moving cause of the disaster. Wright was not responsible for this act. The negligence of the owner and driver of a vehicle cannot be imputed to one who is riding with him gratuitously, so as to defeat a recovery for an injury caused by the concurring negligence of the driver and the third person. *Railway Co. v. Lapsley*, 4 U. S. App. 542, 2 C. C. A. 149, and 51 Fed. 174, 178, and cases there cited; *Little v. Hackett*, 116 U. S. 366, 6 Sup. Ct. 391. It may be that a person of ordinary prudence riding with another under such circumstances as existed in this case would put a certain trust in the driver,—would naturally expect that he would watch for the approach of danger from his side of the vehicle, and that he would not drive forward unless he was assured that there was none in that direction; and that in this way one might be lulled into some degree of security, and led to watch for danger from his own side, and be less cautious about its approach from the opposite direction than he would be if he were the driver. The question was whether Wright exercised such care as a person of ordinary prudence would have used under the circumstances of his case. We hesitate to say that the facts in Wright's case were such that all reasonable men, in the exercise of their deliberate judgment, must come to the conclusion that he did not exercise ordinary care. In our opinion, there was sufficient doubt about this question to warrant its submission to the jury. The judgments in these cases must accordingly be affirmed, with costs; and it is so ordered.

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FARMERS' LOAN & TRUST CO. v. NESTELLE.

(Circuit Court of Appeals, Ninth Circuit. February 23, 1897.)

No. 323.

RAILROADS—PRIORITY OF LIENS—JUDGMENTS FOR PERSONAL INJURIES.

A judgment against a railroad company for damages for an injury caused by its negligence does not take precedence of the lien of a previously existing mortgage. *Farmers' Loan & Trust Co. v. Northern Pac. R. Co.*, 79 Fed. 227, followed.

Appeal from the Circuit Court of the United States for the Northern Division of the District of Washington.

Crowley & Grosscup and John B. Allen, for appellant.

Carr & Preston and S. H. Piles, for appellee.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

HAWLEY, District Judge. On January 12, 1890, Mrs. Levinia Nestelle, while a passenger on one of the trains of the Northern Pacific Railroad, sustained an injury. She subsequently died, and her husband, L. W. Nestelle, petitioner herein, thereafter brought

an action against the railroad company for the injuries received by his wife through its negligence, and recovered a judgment for \$500 and costs. On October 30, 1893, the Farmers' Loan & Trust Company, appellant herein, instituted foreclosure proceedings against the Northern Pacific Railroad Company, and receivers were appointed to take possession of, manage, and operate the property of said railroad company. L. W. Nestelle intervened in said foreclosure proceedings, and on April 1, 1896, the circuit court made an order directing the receiver to pay the judgment obtained by Nestelle against the railroad company, with interest and costs. This appeal is taken from that order. The judgment in favor of Nestelle was obtained prior to the appointment of the receiver. Upon the principles announced in Farmers' Loan & Trust Co. v. Northern Pac. R. Co. (No. 319) 79 Fed. 227, and the authorities there cited, the order of the circuit court is hereby reversed, with costs in favor of the appellant.

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HILLMON v. MUTUAL LIFE INS. CO. SAME v. NEW YORK LIFE INS. CO. SAME v. CONNECTICUT MUT. LIFE INS. CO.

(Circuit Court, Kansas, First Division. April 12, 1897.)

Nos. 3,147, 3,148, 3,149.

**CONTEMPT—OBSTRUCTION OF JUSTICE.**

The writing of a letter by a state superintendent of insurance to each of several insurance companies, refusing to issue a license to do business on the ground that the company had not acted fairly in refusing to pay a certain death loss, and in the litigation of same then pending in a federal court, cannot be summarily punished by that court as contempt, not being done in the presence of the court, or so near thereto as to obstruct the administration of justice.

The three insurance companies, defendants in the cases of Sallie E. Hillmon, plaintiff, pending in this court, have filed a complaint:

That Webb McNall, the superintendent of insurance of the state of Kansas, is guilty of contempt of this court, in this: That he is unlawfully impeding and obstructing, and endeavoring to impede and obstruct, the due administration of justice in the trial of said actions; that said McNall, as superintendent of insurance, did on or about the 3d day of March, 1897, send to each of said insurance companies a letter containing the following statement: "I am satisfied that your company has not dealt fairly with the plaintiff, Mrs. Sallie E. Hillmon, in refusing to pay the death loss, and in the litigation of the same, pertaining to her deceased husband. Hence this department refuses to issue \* \* \* a license to do business in this state for the ensuing year." The defendants further allege: That the arbitrary action of said superintendent of insurance is intended to operate as a pressure upon them to compel them to forego their rights as suitors in this court; to prevent them from litigating the claims which they have been defending for nearly 17 years; will operate to drive them out from the protection of this court, and compel them to pay an unlawful claim, based on murder. That the action of said McNall was done knowingly and willfully for the purpose of vexing, injuring, and harassing petitioners; for the purpose, object, and intent of throwing every obstacle possible in the way of their defense; of intimidating and driving them out of this court; of obstructing and impeding them in the assertion of their rights to a trial by jury, and to a fair hearing; to compel them, by threats and force, to abandon