RHODE ISLAND MORTGAGE & TRUST CO. v. MOULTON.

(Circuit Court, N. D. Illinois, N. D. November 8, 1897.)

CORPORATION—LIABILITY OF STOCKHOLDER FOR CORPORATE DEBT.

The statutory liability of a shareholder in a Kansas corporation for the corporate debts follows the stock, so that one who holds stock when judgment is rendered against the corporation is liable therefor, although he owned no stock when the debt accrued for which the judgment was rendered.

This was an action at law by the Rhode Island Mortgage & Trust Company against Don A. Moulton. The case was heard on demurrer to the declaration.

T. W. Pringle and J. G. Slonecker, for plaintiff.
J. H. Higle, for defendant.

GROSSCUP, District Judge (orally). The action is brought against the defendant as a shareholder in a Kansas corporation, and the declaration sets forth the provisions of the constitution and laws of Kansas wherein the shareholder's statutory liability is created, the creation of debt by the corporation, the judgment thereon, and the issuance of an execution and its return nulla bona. The declaration also avers that the defendant was, at the time of the judgment and the return of the execution, a shareholder in the corporation, but does not aver that he was such shareholder at the time the debt was originally created. The demurrer to the declaration raises this question: Can there be a recovery against one who was a shareholder at the time of the judgment and execution who was not a shareholder at the time the debt was created? After a careful examination of all the authorities, I am constrained to hold that the statutory liability of a shareholder in a Kansas corporation follows the stock, and is, therefore, in force against all shareholders who hold stock at the time of the judgment and default, independently of their relationship to the company at the date of the creation of the debt. The demurrer will therefore be overruled.

PATTON v. SOUTHERN RY. CO.

(Circuit Court of Appeals, Fourth Circuit. November 3, 1897.)

No. 200.

1. NEGLIGENCE—PROVINCE OF COURT AND JURY.

When, in an action of negligence, the facts are undisputed, and such that all reasonable minds must draw the same conclusion from them, it is the duty of the judge to say, as matter of law, whether or not they make a case of actionable negligence.

2. SAME.

In all actions of negligence there is a preliminary question, which the judge must decide: Whether, granting to the testimony all the probative force to which it is entitled, a jury can properly and justifiably infer negligence from the facts proved.

8. SAME—QUESTIONS FOR JURY.
In all actions founded on negligence, whenever the facts are in dispute or conflicting, or the credibility of witnesses is involved, or the preponderance of testimony, and wherever the facts admitted or not denied are such that fair-minded men might draw different inferences from them, it is a case for a jury.

4. MASTER AND SERVANT—NEGLIGENCE OF RAILROAD COMPANY—SAFETY OF ROADBED.
It is the duty of a railroad company to provide a safe track and roadbed, and not to expose its employés to any perils or hazards against which they may be guarded by proper diligence.

5. SAME—DEGREE OF CARE REQUIRED.
The degree of care required from a railroad company in respect to the condition and equipment of its tracks and roadbed is to be measured by the exigencies of the situation, and will often depend upon the situation of the road and the topography of the ground.

6. SAME—ASSUMPTION OF RISKS.
Employés of a railroad company whose road runs through a land of steep grades assume greater risks than if upon level lands.

7. SAME—EVIDENCE—QUESTION FOR JURY.
Plaintiff was injured by the derailment of a train at a sharp curve at the foot of a steep grade. It appeared that there had been previous accidents at the same place from the same cause. There was evidence that a guard rail at that point would be a great safeguard. *Held*, that a question of fact was presented for the jury, whether plaintiff was subjected to any increased or unnecessary danger through lack of some appliance which would have prevented the derailment.

8. SAME—PRESUMPTIONS.
The happening of a railroad accident does not of itself prove negligence, but, where it reveals defects such that ordinary diligence and care would have discovered and prevented them, the company cannot be free from the imputation of negligence in failure to adopt some safeguards or preventive remedies in proportion to the imminency of the danger.

9. SAME—NEGLIGENCE—ACCIDENT.
If an injury is the combined result of accident and negligence, the fact that the contributing cause was pure accident would not exonerate a defendant, if guilty of a want of ordinary care by which the result of the unavoidable calamity might have been essentially mitigated.

Goff, Circuit Judge, dissents generally on the facts.

In Error to the Circuit Court of the United States for the Western District of North Carolina.

F. A. Sondley and Theodore F. Davidson, for plaintiff in error.
George F. Bason and Charles Price, for defendant in error.

Before Mr. Chief Justice FULLER, GOFF, Circuit Judge, and BRAWLEY, District Judge.

BRAWLEY, District Judge. It is difficult to mark with precision the exact line which separates the functions of the judge from the functions of the jury in actions of negligence; for this being a mixed question of law and fact, and the terms by which it is usually defined having a relative significance, the rule requiring judges to decide questions of law, and juries to decide questions of fact, is perplexed with subtleties when applied to the special circumstances of each particular case. When the facts are undisputed, and such that all reasonable minds must draw the same conclusion from them, it is clearly the duty of the judge to say, as matter of law, whether or not they make a case of actionable negligence; but such is the in-