BRENNAN et al. v. DELAWARE, L. & W. R. CO.

(Circuit Court of Appeals, Third Circuit. October 27, 1897.)

No. 18.

RAILROADS—INJURIES TO PERSON ON TRACK—CONTRIBUTORY NEGLIGENCE.

To stand or walk on a railroad track, or so near thereto as to be in the way of a passing train, is negligence such as to warrant the court in directing a nonsuit and in refusing to admit evidence of negligence on the part of the company.

In Error to the Circuit Court of the United States for the District of New Jersey.

This was an action at law by Lawrence Brennan and Ann Brennan against the Delaware, Lackawanna & Western Railroad Company to recover damages for personal injuries suffered by the said Ann Brennan. The circuit court directed a nonsuit, and the plaintiffs have appealed.

Harry E. Richards, for plaintiffs in error.

George M. Shipman and Flavel McGee, for defendant in error.

Before ACHESON and DALLAS, Circuit Judges, and BUTLER, District Judge.

BUTLER, District Judge. The plaintiffs sue to recover damages for injuries inflicted on Ann Brennan by the defendant's train while she stood by the side of its track, with her shoulder and arm extended over. The circuit court, finding her guilty of contributory negligence, directed a nonsuit. To this direction, and also to the exclusion of testimony intended to show negligence of the defendant, in failing to signal, the plaintiffs excepted; and now assign the matters excepted to as errors.

Neither assignment can be sustained. To stand or walk on a railroad track, or so near thereto, as to be in the way of a passing train is negligence at common law. It would be waste of time to cite authority for this statement. The court was therefore right in finding Ann Brennan guilty of negligence. She was in the way of the train without excuse for being there. It was consequently unnecessary to inquire whether the defendant was also negligent; and the offer of testimony was therefore properly excluded. Its admission could not have benefited the plaintiffs. It may be remarked however that the offer did not tend to prove negligence. No crossing, in a legal sense, existed there; and the offer does not suggest that the ground indicated the existence of a custom such as the offer states, or that the defendant otherwise had knowledge of it. If however the custom existed and the defendant had knowledge of it, the plaintiff, Ann Brennan, would be without justification in standing there.

The judgment is therefore affirmed.

RATHBONE v. BOARD OF COM'RS OF KIOWA COUNTY, KAN.[1]

(Circuit Court of Appeals, Eighth Circuit. September 13, 1897.)

No. 788.

1. CONSTITUTIONAL LAW—SPECIAL LEGISLATION.
Under the Kansas constitution (article 2, § 17), prohibiting special legislation unless necessary, it is for the legislature, and not the courts, to determine whether a special law is necessary.

2. COUNTY BONDS—VALIDITY—TIME OF ISSUANCE.
The Kansas statute of March 1, 1876, providing for the organization of counties, townships, and school districts, as amended by the act of February 18, 1886 (Laws 1886, p. 123, c. 90), provides that no bonds of any kind shall be issued by any county within one year after the organization thereof; but the same section contains two provisos, the first of which declares that "none of the provisions of this act shall prevent or prohibit the county of Kiowa * * * from voting bonds at any time after the organization of said county." *Held*, that this proviso in favor of Kiowa county was valid, and authorized it to vote bonds as soon as it was organized. 73 Fed. 395, reversed.

3. SAME—EXCESSIVE ISSUES—CONSTITUTIONAL LIMITATIONS—ASSESSED VALUE.
County bonds were issued under Laws Kan. 1876, p. 159, c. 63, as amended by Laws Kan. 1886, p. 123, c. 90. The act limited such issues to a certain proportion of the assessed valuation of county property. It was not contemplated that these bonds should be issued prior to December 31, 1887, and none were issued until August, 1887. *Held*, that the assessment for 1887, made as of March 1, 1887, was the one that controlled.

4. SAME—INNOCENT PURCHASERS—RECITALS.
Kiowa county, Kan., had authority in 1887 to issue certain bonds, to the amount of $126,008, and no more. It issued two distinct series to two separate railroad companies,—each series for less than that amount, but together exceeding it. The total issue of each series, respectively, was recited in the bonds belonging thereto (but not in the coupons), and they contained broad recitals as to due compliance with legal requirements. Plaintiff bought coupons of one series from A., and of the other series from B., neither of whom had owned bonds of both series. *Held* that neither A. nor B. was charged with notice of the excess, and that plaintiff had acquired all their respective rights.

On Motion to Modify Judgment.

5. DECISION ON ERROR—REVERSAL—CASE TRIED ON AGREED STATEMENT—ENTRY OF JUDGMENT BELOW.
When a jury has been duly waived, and the case tried to the court on an agreed statement of facts, and the damages recoverable are a liquidated sum, the appellate court, on reversing a judgment for defendant, will not award a new trial, but will direct a judgment to be entered against defendant.

In Error to the Circuit Court of the United States for the District of Kansas.

This suit was brought by Charles D. Rathbone, the plaintiff in error, against the board of county commissioners of Kiowa county, Kan., the defendant in error, upon 92 coupons detached from 46 railroad aid bonds which were issued by Kiowa county, Kan. Thirty-two of the coupons were detached from 16 bonds, being a part of 60 bonds, of the denomination of $1,000 each, which were issued by said county on August 4, 1887, to the Kingman, Pratt & Western Railroad Company (hereafter termed the "Kingman Railroad Company"). The remaining 60 coupons were detached from 30 bonds, being a part of 85 bonds, of the denomination of $1,000 each, which were issued by said county on October 3, 1887, to the Chicago, Kansas & Nebraska Railway Company (hereafter termed the "Chicago Railway Company"). The county originally agreed

[1] Rehearing denied December 6, 1897.