

we attach no consequence, but, as the proof showed that there was no guard rail at the curve, and that there were other defects in the track, we are of opinion that there was sufficient testimony to go to the jury, and that there was error in granting the nonsuit. The judgment of the court below is reversed.

GOFF, Circuit Judge. For reasons stated in the opinion filed by me at the present term of the court, in the case of *Patton v. Railway Co.*, supra, I dissent from the judgment entered by the court in this case. I think the cases there cited show conclusively that the court did not err in directing a nonsuit in this case. While it was shown that there was no guard rail at the point where the accident occurred, still there was no evidence that tended to prove that it would have been prevented had such a rail been placed at that point. On the contrary, there was positive evidence, and that of an expert, that a guard rail would not have prevented the accident. A careful examination of the testimony forces me to the conclusion that there was no evidence before the jury showing negligence on the part of the defendant, and I conclude that it would have been the duty of the court to set aside the verdict, had one been rendered in favor of the plaintiff. Therefore I hold that the action of the judge in directing a nonsuit was proper. In my opinion, the judgment of the court below should be affirmed.

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UNITED STATES EXP. CO. v. HUBER. (Circuit Court of Appeals, Seventh Circuit. January 13, 1898.) No. 460. Appeal from the Circuit Court of the United States for the Western District of Wisconsin. F. C. Winckler, James G. Flanders, and W. W. Evans, for United States Express Co. T. F. Frawley and V. W. James, for Henry Huber. Dismissed on motion of plaintiff in error.

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VILLAGE OF OQUAWKA v. PORTSMOUTH SAV. BANK. (Circuit Court of Appeals, Seventh Circuit. January 3, 1898.) No. 363. In Error to the Circuit Court of the United States, for the Southern Division of the Northern District of Illinois. I. M. Kirkpatrick and E. G. Alexander, for plaintiff in error. A. W. Martin, for defendant in error. Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

PER CURIAM. On the authority of the decision in *Village of Oquawka v. Graves*, 82 Fed. 568, the judgment in this case is reversed, and the cause remanded, with the direction that judgment be entered for the plaintiff in error.

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WEST CHICAGO ST. RY. CO. v. ELLSWORTH. (Circuit Court of Appeals, Seventh Circuit. January 13, 1897.) No. 358. In Error to the Circuit Court of the United States for the Northern District of Illinois. John A. Rose and Egbert Jamison, for plaintiff in error. Elmer E. Beach, for defendant in error. Dismissed, on consent of counsel, pursuant to the twentieth rule. See 77 Fed. 664.













































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































