

would be that one in the position of the plaintiff would look after his own safety, but, when the engineer perceived that he was not doing so, it became his duty to put forth every reasonable effort to prevent injury. The judgment below is affirmed.

ATLAS DISTILLING CO. v. RHEINSTROM et al.

(Circuit Court of Appeals, Seventh Circuit. April 16, 1898.)

No. 469.

1. APPEAL AND ERROR—ASSIGNMENT OF ERROR.

An assignment that the court erred in admitting in evidence a certain paper "as set forth in bill of exceptions" is not good because it does not, as required by rule 11 of the circuit court of appeals, contain a statement of the full substance of the document referred to.

2. SAME—EVIDENCE.

Where a document objected to was offered "together with other evidence in depositions and of witnesses examined on the trial in open court showing the same matters," and it does not appear that concerning those matters inconsistent or conflicting evidence was offered, the error in admitting such document was not of sufficient importance to justify a reversal.

3. SAME—MOTION FOR NEW TRIAL.

Where a case at law is submitted to the court without a jury, and judgment is given upon a general finding, the overruling of a motion for a new trial is a matter of discretion, which cannot be reviewed.

In Error to the Circuit Court of the United States for the Southern Division of the Northern District of Illinois.

Isaac J. Levinson, for plaintiff in error.

Geo. T. Page, for defendants in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. The defendants in error sued the Atlas Distilling Company in assumpsit. Trial by jury was waived by stipulation in writing, and the court, upon a general finding, gave judgment in the sum of \$2,330.25 in favor of the plaintiffs. The plaintiff in error urges only the first and fifth specifications of error, which are to the effect, first, that the court erred in admitting in evidence a certified copy of Form 52 A and B, furnished by the internal revenue collector, "as set forth in bill of exceptions," and, fifth, that the court erred in overruling the motion for new trial and rendering judgment upon the finding. Neither of these specifications is available. The first is not good because it does not, as required by rule 11 of this court (21 C. C. A. cxii., 78 Fed. cxii.), contain a statement of the full substance of the document referred to. See *U. S. v. Indian Grave Drainage Dist.*, 85 Fed. 928; *Sladden v. Insurance Co.*, 86 Fed. 102. If a reference to the bill of exceptions for the entire document were enough, the rule would be meaningless. In this instance, if the error alleged were conceded and were well assigned, it would not be of sufficient importance to justify a reversal of the judgment, even if in itself not purely technical, because of the statement in the bill of exceptions that the document objected to was offered "together with other evidence in

depositions and of witnesses examined on the trial in open court, showing the same matters." It does not appear that concerning those matters inconsistent or conflicting evidence was offered.

In respect to the other specification it is enough to refer to the well-settled rule that in a case at law, submitted to the court for trial without a jury, when judgment is given upon a general finding, the review on a writ of error can extend only to the rulings of the court during the progress of the trial, and that the overruling of a motion for a new trial, whether the verdict be general or special, is ordinarily a matter of discretion, which cannot be reviewed. The judgment below is affirmed.

CHICAGO G. W. RY. CO. V. HEALY.

(Circuit Court of Appeals, Eighth Circuit. March 21, 1898.)

No. 891.

1. TRIAL—INSTRUCTION.

Where, at the conclusion of the plaintiff's testimony, the court overruled a motion to direct a verdict in favor of the defendant, to which the defendant excepted, but did not stand upon the exception, and proceeded to introduce evidence, the defendant thereby waived the exception.

2. SAME.

Where, at the close of all the evidence, a motion is made to instruct the jury to return a verdict in favor of the defendant, in deciding the motion the court assumes that all the evidence in the case is true, and that the witnesses are all credible.

3. SAME.

Where the facts are not controverted, and where the inference to be drawn from them is certain, necessary, and undisputed, or where there is no evidence tending to establish a necessary element in the case, the trial court may direct what verdict should be given; but when it is a matter of judgment and discretion, of sound inference, and what deduction is to be drawn from even undisputed facts, the law commits it to the decision of the jury, under instructions from the court.

4. SAME—OMISSION FROM INSTRUCTIONS.

Where the instruction is correct as far as it goes, and the only contention is that it did not go far enough, such contention cannot be taken advantage of on error, unless the attention of the trial court was called to the omission, and request made for more explicit instructions.

5. MASTER AND SERVANT—DEFECTIVE RAILWAY BRIDGE—DUTY OF INSPECTION.

A railroad company owes to its train employes the duty of making reasonably frequent and reasonably thorough inspections of the condition of the timbers in a bridge, and is bound to apply such tests as are ordinary and usual in that business to ascertain any defects which exist therein.

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

A. B. Cummins, for plaintiff in error.

S. P. Huston (J. P. Flick, on brief), for defendant in error.

Before BREWER, Circuit Justice, SANBORN, Circuit Judge, and RINER, District Judge.

RINER, District Judge. This is an action brought by Nellie Healy, as administratrix of the estate of John J. Healy, deceased, against the Chicago Great Western Railway Company, to recover