

SUPREME COURT OF ALABAMA

Oxford Lake Line Co. v. Stedham

101 Ala. 376 (1893) · Decided November 15, 1893

OPINION

HARALSON, J.

HARALSON, J. There were originally five counts in the complaint, to which, by amendment, a sixth was added. The defendant demurred to each count, but before the demurrer was passed on, the plaintiff amended his complaint by striking out all the counts except the 1st and 6th, the demurrers to which were overruled, and defendant took issue on them.

In the written agreement of appellant's counsel filed in the cause, it is admitted that the first count is a good one, and the assignment of error based on its overruling is waived. The averments of negligence in the 6th count are such as have many times been held to be sufficient: — *S. N. A. R. R. Co. v. Thompson*, 62 Ala. 500; *Western R. R. Co. v. Lazarus*, 88 Ala.

453, 6 So. Rep. 877; *E. T. V. & G. R. R. Co. v. Watson*, 90 Ala. 41, 7 So. Rep. 813; *Stanton v. L. & N. R. R. Co.*, 91 Ala. 382, 8 So. Rep. 798; *Ensley R. R. Co. v. Chewning*, 93 Ala. 24, 9 So. Rep. 458. The principles upon which this case rests have been well settled. It is laid down by *Pierce*, in his work on Railroads, that "The authority to operate a railroad includes the right to make the noises incident to the movement and working of its engines, as in the escape of steam and rattling of cars; and also the right to give the usual and proper admonitions of danger, as in the sounding of whistles and the ringing of bells.

It is, therefore, not liable, while exercising its right in a lawful and reasonable manner, for injuries occasioned by horses, when *379being driven upon the highway, taking fright at such noises. But, if the injury resulting from the fright would not have happened, but for a breach of duty by the company, it will be liable for the injury." — *Pierce on Railroads*, 348.

Rorer states the principles to the same effect, and adds: "But if the acts of the servants occasioning the fright are wanton and malicious, and be done in the discharge of their business by using the appliances of the company, such as wanton whistling of the engine, and the reckless discharge of steam, the company will be liable." — *Rorer on Railroads*, 704 (32).

In *Phil. W. & B. R. R. Co. v. Stinger*, 78 Pa. St. 225, in a case similar to this, it is said: "It may be safely assumed, that the company is not liable for injuries resulting from the use of its cars, where due care is exercised.

The noise of a rapidly moving train, as well as the sound of the whistle, may alarm a horse, and cause an accident; whether such accident imposes a liability upon the company to make compensation in damages, must depend, to a great extent, upon the fact, whether it was the result of a want of proper care on the part of the persons in charge of such train." In that case, the fright and running away of the horse and the consequent injury to the plaintiff, was alleged to have been occasioned by the unnecessary and improper blowing of the whistle of the engine, and it was held, that the mere fact of the whistling furnished no presumption of negligence, inasmuch as the whistle was in general use on all roads operated by steam, and was necessary and proper to be used; but whether or not it was used in such an improper, reckless or wanton manner as to amount to negligence, was a subject of legitimate inquiry, to be submitted under all the facts of the case to the jury.

In *Stanton v. L. & N. R. R. Co.*, supra, the foregoing principles received approbation at our hands, and it was further held that, "as the railroad corporation has the right to use its track, and make the required signals at a public crossing, and all the usual noises incident to the running and moving of its trains, it was incumbent on' the plaintiff to show the blowing off of steam and the making of the noise complained of were unnecessary, and recklessly or wantonly done, or with the intention to frighten the m are. " *380The evidence in this cause showed, without contradiction, that the plaintiff, at the time he was injured, was riding in a buggy with another party, drawn by a mule, returning home from the town of Oxford; that the mule was a gentle one, had never run away before, but would some times shy or dodge; that the public highway he was travelling ran parallel with a street in said town, along which the defendant's railroad ran, but how far apart is not shown, further than that at the point of the accident the track came within about thirty feet of the public road the defendant was travelling, and at that point, it turned by a sharp curve to the right, and ran away from said road; that the engine of the defendant's train was under the management of a skillful and competent engineer; that as the train was approaching said curve, it was running about six miles an hour, and steam was being blown off under the engine, at which plaintiff's mule took fright, ran off, threw him out of the buggy and injured him.

The evidence on the part of the defendant showed, that it was the invariable custom of the engineer, in approaching said curve, to let off steam to slow up in making the curve; that he did not allow any more steam to escape than was necessary or customary. And the engineer swore, he had no idea or thought of frightening plaintiff's mule. There is nothing in the plaintiff's evidence to contradict that offered by defendant, or at variance with it, unless it be a statement by one Brown, examined by the plaintiff.

He was an engineer, and the statement to which we refer is, "that witness had been on the car going to Oxford Lake many times, and did not know any place where it was necessary to let off steam." This statement was, in effect, that the witness did not know of or remember the curve in

this railroad, at the time he testified. He says nothing about the curve in his testimony, and the other undisputed evidence in the cause shows it was a very sharp one.

The engineer states in reference to it, "That said curve, near which the accident occurred, was and is a very sharp curve, and persons could not be seen on the track ahead, until said curve had been entered." It was his duty to slow up and make that turn in the track with great caution.

As we said, in a recent case touching this matter, we may here repeat, that in running a train where a curve is to be turned, and where the view is obstructed, "the sharper the curve the greater the care with which trains as to their speed should be operated, to prevent the liability to encounter obstacles hidden by reason of the curve. Where any thing suggests care to avoid peril and danger to others, the higher the duty increases to observe it." — Birmingham Min.

R. R. Co. v. Harris, 98 Ala. 326. So, there is nothing in the evidence of this witness to dispute or set aside the other undisputed evidence in the cause, — that the train of defendant was being operated at the time by a careful engineer, in a prudent manner, and with no more noise or escape of steam than was usual and necessarily incident to its movement.

The plaintiff's injury arose from no negligence of the defendant's employés, and was an accident for which defendant is in no way responsible. The general charge, as requested by defendant, should have been given. Reversed and remanded.