ST. LOUIS
LAW REVIEW

Published Quarterly During the University Year by the
Undergraduates of Washington University School of Law.

NOTES

THE LIABILITY OF A STREET RAILWAY COMPANY TO AN ALIGHTING PASSENGER STRUCK BY A PASSING VEHICLE

Can a passenger who is struck by a passing vehicle while alighting from a street car recover from the street railway company for the injuries he sustains? The congested condition of busy city thoroughfares frequently gives rise to just such questions, and the usual tendency of the injured party is to try to attach the entire responsibility for the injury to the street railway company rather than to the driver of the passing vehicle. Strangely enough, there seems to be a conflict of opinion among the Courts of the country as to the liability of the street railways under such circumstances.

The general rule in these cases, as stated in 4 Ruling Case Law, 1047, is: "A person attempting to alight from a street car remains a

passenger until he has accomplished the act of alighting in safety, and the carrier owes to the passenger attempting to alight that very high degree of care and attention which the law puts upon it generally to the end of promoting the safety of its passengers, and will be liable for negligent injury to the passenger while so alighting."

There is a certain rather modern trend of authority which favors the extension of the liability of the street railway companies to the utmost extent, and which supports unqualifiedly the doctrine that the street railways are liable for injuries to alighting passengers. These authorities contend that the street railway companies have failed to afford the passenger a safe place to alight and that such failure can be viewed in no other light than negligence.

In support of the doctrine of the liability of the street railway companies, the rule is advanced in 10 Corpus Juris, 945, that "it is the duty of the employees in charge of street cars to exercise toward every passenger getting on or alighting from a car that high degree of care which prudent persons engaged in the operation of cars exercise for the safety of passengers under the circumstances," and in 10 Corpus Juris, 951, that "where a car has stopped for the purpose of setting one or more passengers on or off, even though it has stopped for a reasonable length of time, it is the duty of the employes in charge of the car to see, before starting it, that there is no passenger in the act of boarding or alighting, and that all passengers attempting to get on or off have reached a place of safety." Also Jerome v. United R. Co., 155 Mo. A., 202; Parker v. U. R. Ry. Co., 154 Mo. A., 126; Allen v. Metropolitan Street Ry. Co., 133 Mo. A., 425.

In Wharton on Negligence, Sec. 649, the author even goes so far as to say that "when a danger approaches, it is the duty of the officers of the road to notify the passengers, so that they can take steps to avoid it; and failure to give such notice is negligence. So, also, if there is a dangerous place at the landing, it is the duty of the conductor to warn those about stepping out" and "he must give notice to all if any danger in alighting is probable." Also, McLean v. Burbank, 11 Minn., 277; Derwort v. Loomer, 21 Conn., 245.

In Lehner v. Metropolitan St. Ry. Co., 110 Mo. A., 215, the Court said: "Street railways, as other carriers, are required to exercise toward the passengers the utmost care and diligence of very cautious persons. And this duty applies where a passenger is getting off or on a car."

In Cartwright v. R. R., 42 Mich., 606, Cooley, C. J., says: "If a car in which there were passengers was not standing where it would be safe for them to alight without assistance, it was the duty of the

company to provide assistance, or give warning, or move the car to a more suitable place."

Thus we see that there is no lack of statements of commentators and dicta of Judges in support of the doctrine that it is the duty of the street railway companies to provide their passengers a safe place to alight.

Cases in point whose decisions support the doctrine that the street railway companies are liable to alighting passengers struck by passing vehicles are not infrequently met with. This doctrine is supported in the case of Norton v. Third Ave. Ry. Co., 26 App. Div., 60; 49 N. Y. Supp., 398, where the conductor gave signal for starting the car while a woman passenger was in the act of alighting, and before stepping into the street, she was injured by being run over with a truck. The Court held the street car company liable for failure to afford the passenger a safe place to alight.

In Louisville Ry. Co. v. Mitchell, 138 Ky., 190, the Court even went so far as to hold that a street railway company's duty to exercise a high degree of care toward passengers continues until the passenger alights from the car, and has a reasonable opportunity to reach a place of safety.

The case of Burbridge v. K. C. Cable Ry. Co., 36 Mo. App. 669, sometimes cited as holding the railway company liable in such a case, is easily distinguishable. There it was held that the plaintiff having been a passenger on defendant's eastbound car on its south track, on leaving the same at a junction, was still a passenger in so far that he was entitled to protection against the negligent movement of defendant's cars on its north track whilst he was passing over such track to the junction sidewalk and perhaps until said eastbound car had cleared the street. The decision was right as the defendant was equally liable for the negligence of the motorman in charge of the car on the northbound track, which was the proximate cause of the injury.

In Richmond City Ry. Co. v. Scott, 86 Va., 902, it was held that street railway companies bind themselves to carry safely those whom they take into their coaches, to the utmost care and diligence of very cautious persons; and this contract includes the duty of giving passengers reasonable opportunity to alight safely from the car, and a violation of such duty is culpable negligence, for which an action will lie.

In the case of Wood v. North Carolina Public Service Corporation, 174 N. C., 697, a passenger was struck the instant she reached the ground by an automobile passing at high speed. The company was held liable on the theory that it had failed to perform its duty to afford

the passenger a safe place to alight. It was held no defense that it could not avoid liability for its negligence because the driver of the automobile was also negligent. In delivering the opinion of the Court, Allen, J., said: "The negligence of the driver of the automobile is established by the evidence, but this does not relieve the defendant" (the street railway company) "from liability, if it was also negligent, as there may be two proximate causes of an injury." The learned Judge went on to say that "there is a higher degree of care imposed upon street railways than upon ordinary steam railways," that "the defendant owed to the plaintiff a high degree of care," and that "it was its duty to protect her from and warn her of danger and to see that she alighted in safety."

The Massachusetts Courts in particular, however, take exception to the doctrine that the street railway company is liable to an alighting passenger who is injured by a passing vehicle. In Creamer v. West End Street Railway Co., 156 Mass., 320, the Court said: "The street is in no sense a passenger station, for the safety of which a street railway company is responsible. * * * When a common carrier has the exclusive occupation of its tracks and stations, and can arrange and manage them as it sees fit, it may be properly held that persons intending to take passage upon or leave a train have the relation and rights of passengers in leaving or approaching the cars at a station; but one who steps from a street railway car to the street is not upon the premises of the street railway company, but upon a public place where he has the same rights with every other occupier, and over which the company has no control. His rights are those of a traveler upon the highway, and not of a passenger."

In Oddy v. West End Street Railway Co., 178 Mass., 341, the plaintiff upon leaving the car was struck by a hose cart immediately upon reaching the ground and before he had an opportunity to take a step after doing so. The Court held that there was no evidence of negligence on the part of the street railway company. The learned Judge said: "Street car companies carrying passengers in ordinary public streets or highways are not negligent in not providing means for warning passengers about to leave a car of the danger of colliding with or being run over by other vehicles in the street. The risk of being hurt by such vehicles is the risk of the passenger, and not that of the carrier. It is not a danger against which the carrier is bound to protect the passenger or to give him warning." In accord with the doctrine of the non-liability of the street railway company advanced by the Massachusetts Courts will be found the cases of St. Ry. v. Boddy,

105 Tenn., 666, and Busby v. Phil. Traction Co., 126 Pa., 559. Also, in a note to Duchemin v. Boston Elev. Ry. Co., 104 Am. St. Rep., at p. 589.

It cannot be denied that the street railway company owes its passengers the duty of using the utmost care to insure their safety, consistent with the character of its business, and for any negligence on its part, however slight, causing injury it should respond in damages. But can the fact that a passenger is injured by a passing vehicle, over which the officers of the road have no control, while alighting from a street car constitute grounds for an action for negligence? A review of well established principles of the law of carriers convinces us that it can not.

The street railways are not insurers of the safety of their passengers. Their duty is discharged when they have used "the highest degree of care *consistent with the nature of their undertaking.*" Warren v. Fitchburg Railroad Co., 8 Allen (Mass) 227. The liability of a carrier is defined in Schouler on Bailments and Carriers, Sec. 652, as follows: "The carrier of passengers must use the utmost forethought, care, and diligence towards the human beings traveling under his charge, *consistently with the nature and extent of the business he pursues;* and for the injurious consequences of even slight negligence on the part of himself or his servants, he is, in this sense, liable, though not as one whose vocation imports a warrant of absolute safety, or of indemnity against those disasters which the exercise of due forethought, care, and diligence on his part fails to avert." Also, Keokuk Packet Co. v. True, 88 Ill., 608. The general rule in 4 Ruling Case Law, 1047, stated at the outset, also emphasizes the fact that the carrier "will be liable for *negligent* injury" only. Surely, setting a passenger down at an accustomed stop where the passenger has an opportunity equally as good as that of the street railway's employees of seeing the dangers to which he is exposed can not constitute negligence. The danger of being struck by a passing vehicle while alighting from a street car is not a risk which the street railway company should be compelled to assume. Oddy v. W. E. St. Ry. Co., 178 Mass., 341. The assumption of such risks and the taking of such precautions as are suggested in Wharton on Negligence, Sec. 649 (quoted above), would be clearly inconsistent with the practical operation of a street railway.

The leading case of Warren v. Fitchburg Railroad Co., 8 Allen (Mass.), 227, decided in 1864, has defined the duties of the carrier of passengers with great nicety. The learned Court said: "The duty is to use the utmost care in regard to the ordinary and usual appliances

and means of carrying on their business. They are not to take every possible precaution to prevent injury; for that would be inconsistent with the cheapness and speed which are among the chief objects of railway traveling. But *their care is to be exercised in relation to such matters and in such ways as are appropriate to the business they have undertaken,* to afford proper and reasonable securities against danger; and it is only in regard to these, from the importance of the interests involved, that they are held to a proportionate, that is, to the utmost care, and diligence." The doctrine of this case has been widely followed, and should be departed from with reluctance.

Clearly, then, the Massachusetts doctrine of non-liability of street railway companies for injuries to an alighting passenger caused by a passing vehicle, over which the employees of the street railways have no control, is the most reasonable doctrine and at all events the most venerable. But competent authority is not lacking which holds the street railway companies liable for such injuries. Surely, it cannot be definitely said that the controversy is without the category of mooted questions.

JAMES THORNTON DOLAN.