NEGLIGENCE

Duty of Street Car Company to Warn of Dangers in Street

The plaintiff, a passenger on defendant's westbound street car, was struck and injured by an automobile traveling toward the street car, as she was alighting from the north side thereof. All traffic was required to use the north side of the road; the south side being closed for the installation of water mains, of which fact the plaintiff was ignorant, as indicated by the question asked the conductor concerning the place to leave the car. A motion for judgment was granted the defendant, which judgment the court of appeals reversed. The supreme court held that there was no duty to warn a passenger about to alight from a car of dangers in the street over which the company had no control. *Baier* v. *Cleveland Ry. Co.*, 132 Ohio St. 388, 8 N.E. (2d) 1 (1937).

A street railway company is not the insurer of the safety of its passengers. *Bevard* v. *Lincoln Traction Co.*, 74 Neb. 802, 105 N.W. 635, 19 Am. Neg. Rep. 366 (1905). But the company is held to the highest degree of care to afford a reasonably safe place to alight. *Baier* v. *Cleveland Ry. Co., supra; Reining* v. *The Northern Ohio Traction & Light Co.*, 107 Ohio St. 528, 140 N.E. 84 (1923); *Mahoning & Shenango Ry. & Lt. Co.* v. *Leedy*, 104 Ohio St. 487, 136 N.E. 198 (1922); *Mobile Light & R. Co.* v. *Therrell*, 205 Ala. 553, 88 So. 677 (1921). However, a few cases hold that its duty is only that of reasonable care to see that the place selected is safe. *Pabst* v. *Public Ser. Ry. Co.*, 104 N. J. L. 537, 141 Atl. 773 (1928); *Reid* v. *Minneapolis St. Ry. Co.*, 171 Minn. 31, 213 N.W. 43 (1927). The duty to afford a safe place to alight does not extend to conditions over which the company has no control, such as on-coming automobiles. *Hammett* v. *Birmingham R. Light & P. Co.*, 202 Ala. 520, 81 So. 22 (1918); *St. John, Admr.* v. *Connecticut Co.*, 103 Conn. 641, 131 Atl. 396 (1925); *Jacobson, Admr.* v. *Omaha & C. B. St. Ry. Co.*, 109 Neb. 356, 191 N.W. 327, 31 A.L.R. 563 (1922).

The relation of carrier and passenger terminates upon the passenger's alighting in safety to the street, and the company is not liable for injury to such person from subsequent dangers from conditions over which it has no control. *Reining, Admr.* v. *The Northern Ohio Traction & Light Co., supra; Welsh* v. *Spokane & Inland Empire R. Co.*, 91 Wash. 260, 157 Pac. 679, L.R.A. 1916F 484; *Wittkower, et al.* v. *Dallas Ry. & Terminal Co., et al.*, (Tex. Civ. App. 1934), 73 S.W.

(2d) 867; *Trout's Admr.* v. *Ohio Valley Electric Ry. Co.*, 241 Ky. 144, 43 S.W. (2d) 507 (1931). But it has been held that where a passenger was struck by a passing vehicle immediately after alighting or upon taking a step away from the car, the relationship of carrier and passenger had not ceased, and the company owed him a duty of protection or to warn him of dangers from vehicles that may be passing in the street. *Wood* v. *North Carolina Public Ser. Corp.*, 174 N. C. 697, 94 S.E. 459, 1 A.L.R. 946 (1917); *Loggins* v. *Southern Pub. Utilities Co.*, 181 N. C. 221, 106 S.E. 822 (1921).

The great weight of authority, however, is that there is no duty on the part of the employees of a street railway company, under ordinary circumstances, to warn alighting passengers, at regular stops, of the dangers arising from the operation of vehicles in the streets. *Ruddy, et al.* v. *Ingebret, et al.*, 164 Minn. 40, 204 N.W. 630, 44 A.L.R. 159 (1925); *Jacobson, Admr.* v. *Omaha & C. B. St. Ry. Co., supra; Trimboli* v. *Public Ser. Co-ordinated Transport*, 111 N. J. L. 481, 168 Atl. 572 (1933). This rule was followed in the case of *Reining* v. *The Northern Ohio Traction & Light Co., supra*, and *Cleveland Ry. Co.* v. *Karbole*, 125 Ohio St. 467, 181 N.E. 883 (1932) where the facts were comparable to that of the principal case with the exception that the plaintiff had alighted to a place of safety. The latter case also held that such a barricade, in the absence of showing that the company created or contributed to it, does not amount to a dangerous situation such as would change the rule. The courts have given as reasons in support of this rule that the danger is equally observable by and obvious to the passenger, *Trimboli* v. *Public Ser. Co-ordinated Transport, supra*, and that the motorman might anticipate that traffic approaching a customary stopping place would exercise due care. *Anderson* v. *Grandy*, 154 Wash. 547, 283 Pac. 186 (1929).

While a number of cases recognize that there is no duty to warn the passenger alighting at other than the usual stopping place, *Chesly, Admr.* v. *Waterloo C. F. & N. R. Co.*, 188 Iowa 1004, 176 N.W. 961, 12 A.L.R. 1366 (1920); *Oddy* v. *West End St. R. Co.*, 178 Mass. 341, 59 N.E. 1026, 86 Am. St. Rep. 482 (1901); *Louisville Ry. Co.* v. *Saxton*, 221 Ky. 427, 298 S.W. 1105 (1927); *Lindgren* v. *Puget Sound International Ry. & Power Co.*, 142 Wash. 546, 253 Pac. 791 (1927), there is some authority that such a duty is owing to the passenger, the motorman being chargeable with knowledge of the additional danger. *Gulfport & Miss. Coast Traction Co.* v. *Raymond*, 157 Miss. 439, 128 So. 327 (1930); *Fuchs, et al.* v. *Dallas Ry. & Terminal Co.*, (Tex. Civ. App. 1929), 18 S.W. (2d) 854; *Georgia R. & P. Co.* v. *Ryan*, 24 Ga. App. 288, 100 S.E. 713 (1919).

Where a street railway company has created a situation of danger, or has placed obstructions in the street, where the car stops, there is a duty upon the company to remove the danger or to warn the passenger of its existence. *Mahoning & Shenango Ry. & Lt. Co.* v. *Leedy, supra; Gates* v. *New Orleans Ry. & Light Co.*, 141 La. 946, 75 So. 1002 (1917).

It has been held that actual knowledge of defects or obstructions in a street at a stopping point, unknown to the passenger, places upon a street car company the duty to guard the same or warn the passenger of the danger. *Richmond City Ry. Co.* v. *Scott*, 86 Va. 902, 11 S.E. 404 (1890); *Cleveland Ry. Co.* v. *Ranft*, 12 Ohio App. 397 (1920); *Mobile Light & R. Co.* v. *Therrell, supra; Mayhew* v. *Ohio Valley Electric Ry. Co.*, 200 Ky. 105, 254 S.W. 202 (1923); *Alabama Power Co.* v. *Hall*, 212 Ala. 638, 103 So. 867 (1925).

The principal case and *Jacobson, Admr.* v. *Omaha & C. B. St. Ry. Co., supra*, recognized that there may be exceptions in the case of a child, or one under apparent disability, or where other extraordinary situations may exist. The court in the latter case said, in addition, that, where it is known to the employees that a passenger about to alight is unaware of the danger, there is a duty to warn such passenger. This was the basis of the dissenting opinion in the principal case, because the evidence tended to show that the conductor knew the plaintiff was somewhat unfamiliar with the condition of the street. Upon this point the majority held that the questions asked the conductor indicated nothing more to him than that the plantiff was not familiar with the regular street car stops.

If knowledge of the plaintiff's ignorance of the danger had been established on the part of the conductor, it would seem that the company owed the plaintiff the duty to warn her of such danger. The situation, here, is somewhat analogous to that of an obstruction in the street, in that there can be no question of the additional danger caused by the barricade. But, if the majority's construction of the evidence be accepted, the case is clearly in accord with the weight of authority.

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