

Merrimack, }  
Dec., 1894. }

AYERS v. BOSTON & MAINE RAILROAD.

Whether a plaintiff who was injured while attempting to load milk-cans upon a slowly moving train was guilty of contributory negligence, is a question for the jury.

CASE, for personal injuries. Verdict for the plaintiff. The plaintiff shipped milk daily from the defendants' station at North Boscawen for six months before the accident. It was the duty of those shipping milk to deliver it upon a platform provided for the purpose, and to hand the cans from the platform into the car. The brakeman of the train was accustomed to help load the milk, and, after it was loaded, to give the conductor a signal for him to start the train. December 30, 1892, the plaintiff, assisted by other milk-shippers and the brakeman, was loading milk; and when all but five cans were loaded, the train started without any signal from the brakeman and without notice or warning to the plaintiff. The plaintiff hurriedly took up three of the cans, walked along the platform beside the car, which he perceived to be moving, tried to put them into the car, and was injured.

The defendants excepted to the denial of their motions for nonsuit and direction of verdict, and their request for the following instructions: "(1) The danger from placing the milk cans on the moving train was an obvious one and was voluntarily assumed by the plaintiff, and therefore he cannot recover. (2) The plaintiff's attempt to place the milk cans upon the car while the car was moving, the plaintiff knowing said car to be moving, was negligence on the part of the plaintiff which caused the accident, and the plaintiff cannot recover."

*Sargent & Hollis*, for the plaintiff.

*Joseph W. Fellows* and *Edward B. S. Sanborn*, for the defendants.

BLODGETT, J. It would serve no useful purpose to comment upon evidence such as appears in this case.

The defendants' motions and requests were properly denied. *Lyman v. Railroad*, 66 N. H. 200, 204; *Foss v. Railroad*, 66 N. H. 256, 260; *Felch v. Railroad*, 66 N. H. 318, 320, 322, 323; *Boothby v. Railway*, 66 N. H. 342; *Walker v. Railroad*, 64 N. H. 414; *Paine v. Railway*, 63 N. H. 623; *Merrill v. Express Co.*, 62 N. H. 514; *Nutter v. Railroad*, 60 N. H. 483, 485; *Tuttle v. Farmington*,

58 N. H. 13, 14; *Griffin v. Auburn*, 58 N. H. 121, 124; *Paine v. Railway*, 58 N. H. 611; *Gilman v. Noyes*, 57 N. H. 627; *Sleeper v. Sandown*, 52 N. H. 244; *Cheshire Railroad v. Foster*, 51 N. H. 490, 493; *Page v. Parker*, 43 N. H. 363; *Palmer v. Portsmouth*, 43 N. H. 265.

*Exceptions overruled.*

WALLACE, J., did not sit: the others concurred.

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STEVENS, *Tr.*, v. DOUGLASS & a.

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A bequest in trust, the income thereof to be paid to D. during his life, and at his decease the principal to be divided among his children as they shall severally attain the age of twenty-one years, vests in the surviving children upon the decease of D.; and the subsequent income is payable to the guardian of the minor children as soon as collected by the trustee.

BILL IN EQUITY, by the trustee under the following clause of Marion D. Lake's will, praying for direction in the execution of the trust: "As to all the residue and remainder of all my estate of every kind, I give, devise, and bequeath the same unto the said Henry J. Crippen, to hold the same in trust for the benefit of John Douglass of Lancaster, aforesaid. To have the care and control of, and keep the same properly invested and pay over the income thereof to the said John Douglass during his natural life, and at his decease to pay over the principal of said fund to his surviving children, in equal portions, as, and when they shall severally attain the age of twenty-one years, free from said trust." The plaintiff is the successor of Crippen in the trusteeship. The testatrix was a resident of this state at the time of her decease. The residue of her estate consisted of personal property and a piece of real estate situated in Concord. John Douglass, a resident of Canada, died in May, 1893, leaving a widow and eight children, the oldest of whom was fourteen years old. Direction is sought upon the following points: (1) Can the plaintiff rightfully pay the Douglass children or their guardian, during their minority or at the time they become twenty-one years old, the income of the trust fund; and if not, to whom shall it be paid? (2) If any child should die before becoming twenty-one years old, to whom would his share of the trust fund go? If its disposition would be governed by laws of