

(Harrison Case - Powell Circuit Court.)

Thereupon the defendant moved the Court to give to the Jury the following four Instructions, numbered respectively 1, 2, 3 and 4 --

"1. If the jury believe from the evidence that, on the occasion in question, plaintiff attempted to alight from defendant's train, when the same reached Stanton, and in attempting to get off of said train at said time and place, was, by the motion of said train, thrown or caused to fall to the ground and thereby injured, yet, if the jury further believe from the evidence that plaintiff made such attempt to alight from said train, while said train was in motion and before said train, after reaching the station at Stanton, had come to a full stop thereat, the jury will find for the defendant.

"2. If the jury believe from the evidence that, on the occasion in question, plaintiff attempted to alight from defendant's train, while same was in motion and running at such a rate of speed that a reasonably prudent person, in the exercise of ordinary care for his own safety, ought not to have so attempted, and that, in so attempting to alight, the plaintiff was, by the motion of said train, caused to fall or be thrown to the ground and thereby injured, the jury will find for the defendant.

"3. If the jury believe from the evidence that, at the time and place and on the occasion in question, plaintiff was himself guilty of negligence, which contributed to cause the accident and injuries, if any, complained of, and that but for such negligence, if any, on the part of plaintiff, such accident and injuries would not have happened, the jury will find for the defendant, notwithstanding the jury may also believe from the evidence that defendant's *negligence* was negligent in not stopping its train. *as set out in the 1st & 2nd instructions*

"4. Ordinary care is such care as is exercised by an ordinarily careful and cautious person under the same or similar circumstances to those proved in this case.

Negligence is the want of ordinary care."

To the giving of said Instructions and each of them, the plaintiff objected and the Court sustained said objection and overruled and refused to give said Instructions or any of them, to which the defendant excepted.

Thereupon, the defendant again moved the Court to give to the Jury the following three Instructions, designated respectively, A, B and C -