

ILLINOIS CENT. R. CO. V. WARREN.

(Circuit Court of Appeals, Fifth Circuit. December 31, 1906.)

No. 1,533.

1. CARRIERS - PASSENGERS - ANNOUNCEMENT OF STATION - INVITATION TO ALIGHT. The announcement of the next station by a porter on a railway passenger train, though made on the near approach to the station, is not an invitation to a passenger to leave his seat and attempt to alight before the train actually stops.

(Ed. Note. - For cases in point, see Cent.Dig. vol. 9, Carriers, § 1224.)

2. SAME - POSITION IN TRAIN - CONTRIBUTORY NEGLIGENCE.

Plaintiff and his brother-in-law were riding on a railroad train, guarding a negro. On the announcement of the station where they intended to alight, plaintiff, for the purpose of resuming custody of the negro and of getting off quickly, left his seat in the smoking compartment while the train was in motion, and went forward through the colored compartment to the front door of the car, which he opened, and stood there waiting for the train to slow down, with his right foot on the door sill, his left foot on the platform, and his right hand on the door facing, from which position he was knocked or pushed by the train porter, so that he fell from the car while the train was in rapid motion, and was injured. HELD, that plaintiff was guilty of contributory negligence in taking the position he did and was not entitled to recover, in the absence of proof that the action of the train porter was willful.

(Ed. Note. - For cases in point, see Cent.Dig.vol. 9, §§ 1375, 1376.)

3. SAME - WILLFULNESS.

In an action for injuries to a passenger by being pushed from a car platform by the car porter while the train was in rapid motion, evidence held insufficient to warrant a finding that the porter's act was willful or other than accidental or negligent.

4. EXCEPTIONS, BILL OF - CONSTRUCTION.

Where, in an action for injuries to a passenger, defendant claimed that certain acts occurring at the trial with reference to the extent of plaintiff's injuries unduly influenced the sympathies of the jury, and applied for a new trial on that ground, but the trial judge in denying a new trial did not specifically find that undue influence and prejudice had in fact occurred, the bill of exceptions on a writ of error should be construed to mean that, while the facts were as stated, the jury were not unduly influenced thereby.

Shelby, C.J., dissenting.

In Error to the Circuit Court of the United States for the Northern District of Mississippi.

This is a suit brought originally by James Warren against the Illinois Central Railroad Company to recover damages for personal injuries received under the following circumstances, as detailed by himself on the witness stand:

(Here follows testimony)

Warren's brother-in-law, J. H. Kelly, corroborated Warren's evidence, and further testifies that after Warren was knocked