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# Carriers--Negligence--Negligence of Passengers Alighting from Moving Train (Harvin v. Kenan, 26 So.2d 688 (Fla. 1946))

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weight and speed alone are liable to cause damage if defectively constructed. Responsibility for the breach of duty once rested on actual knowledge of the defect on the part of the dealer or seller,<sup>4</sup> but in later cases it was decided that this knowledge may be imputed in a great many cases, among them, when there is a duty to know and also when a person of ordinary care and prudence under the same or similar circumstances ought to have known.<sup>5</sup>

The doctrine as to automobile dealers may be summed up by saying that a dealer in standard make cars is not required to dismantle the car in order to be absolved, but the law imputes to such dealers such knowledge of its condition as can be ascertained by the use of ordinary care. The failure of the buyer to discover these defects, such as defective brakes, is not an intervening cause as will excuse the seller of liability.<sup>6</sup> A dealer in second hand cars who undertakes to overhaul and recondition used cars for subsequent use by others has the same duty as a manufacturer to exercise reasonable care as to the condition of the vehicle.<sup>7</sup> This is not the duty of an insurer, but merely one of using care to discover patent defects.<sup>8</sup>

E. J. M.

CARRIERS—NEGLIGENCE—NEGLIGENCE OF PASSENGER ALIGHTING FROM MOVING TRAIN.—Appellant sued to recover damages for injuries sustained while a passenger on appellee's railroad. Appellant alleges that while she was a passenger on appellee's daycoach she was awakened in the early morning, when it was still dark, and informed that her destination was the next stop. She proceeded to the vestibule to alight, and found the gangplank up and the door open. Thinking the train had stopped, she stepped off and was thrown under the train, sustaining serious injuries. The negligence alleged was the opening of the door and the raising of the gangplank, without providing a guard, before the train came to a stop. *Held*, judgment for defendant affirmed. *Harvin v. Kenan*, — Fla. —, 26 So. (2d) 688 (1946).

The court in reaching its decision considered the following points: First, in order for liability to attach to the railroad it is necessary that there be negligence on the part of the railroad or its agents. For the negligence to be actionable there must be a causal

<sup>4</sup> *Huset v. J. I. Case Threshing Mach. Co.*, 120 Fed. 865 (1903).

<sup>5</sup> *Wichert v. Wisconsin Central Ry.*, 142 Wis. 375, 125 N. W. 943 (1910); *Flies v. Fox Bros. Buick Co.*, 196 Wis. 196, 218 N. W. 855 (1928).

<sup>6</sup> 5 AM. JUR. 690 § 349.

<sup>7</sup> *Bock v. Truck & Tractor, Inc.*, 18 Wash. (2d) 458, 139 P. (2d) 706 (1943).

<sup>8</sup> *Eagan Chevrolet Co. v. Bruner*, 102 F. (2d) 373 (1939).

connection between the negligence and the injury.<sup>1</sup> If there was negligence on the part of the appellant it would not have constituted a bar to appellant's cause of action, because Florida recognizes the doctrine of comparative negligence.<sup>2</sup> Second, appellant's contention that notice of destination, opening the door and raising the gangplank, while the train was still in motion, without providing a guard, spelled out negligence on the part of the railroad. The court, in answer to this, cited a Kentucky case which was directly in point and held, "that it was not negligence to announce the station before the train arrived and the opening of the doors did not constitute an invitation to alight before the train came to a stop."<sup>3</sup> This case is distinguishable from a case wherein a passenger was notified that the next scheduled stop was his destination, the train was stopped before reaching the destination (not a place used for the embarking and disembarking of passengers), the gangplank was up and the door opened. It being dark and foggy, the passenger supposing this to be his station, alighted from the train and thereby was injured. There it was decided that the railroad breached a duty it owed to the passenger to inform him of this departure from its scheduled itinerary and was held liable for its negligence.<sup>4</sup> Third, as to the degree of care owed by a railroad company for the safety of its passengers a railroad company is held to a high degree of care for the safety of its passengers, but, this duty does not relieve the passenger of exercising a reasonable degree of care for his own safety. The passenger, in possession of his normal faculties, is expected to know when the train is in motion.<sup>5</sup> It does not appear in this case that the train was operated in a negligent manner.

The application of existing law and the resulting opinion represent the majority rule, except that in jurisdictions where the doctrine of comparative negligence is not recognized, the appellant in all probabilities would have been non-suited. In New York it has been held that for a passenger to alight or to board a moving train is negligence *per se*, and acts as a bar to recovery.<sup>6</sup> In a New York case where the facts were similar to those in the main case, it was held that, merely announcing the approach of the station and opening the doors, is not an invitation to alight in the absence of a direction to alight by an agent or a servant of the railroad and no liability would attach.<sup>7</sup>

I. G. & F. W. M.

<sup>1</sup> Atlantic Coast Line R. R. v. Webb, 112 Fla. 449, 150 So. 741 (1933); Florida East Coast Ry. v. Wade, 53 Fla. 620, 43 So. 775 (1907).

<sup>2</sup> Louisville & Nashville R. R. v. Norton, 75 Fla. 597, 78 So. 982 (1918).

<sup>3</sup> Gayle's Administrator v. Louisville & Nashville R. R., 163 Ky. 459, 173 S. W. 1113 (1915).

<sup>4</sup> Louisville & Nashville R. R. v. Norton, 78 Fla. 597, 78 So. 982 (1918).

<sup>5</sup> Zelman v. Pennsylvania R. R., 93 N. J. L. 57, 107 Atl. 442 (1919); Maerns v. Central R. R. of N. J., 163 N. Y. 108, 57 N. E. 292 (1900).

<sup>6</sup> Solomon v. Manhattan Ry., 103 N. Y. 437, 9 N. E. 430 (1886).

<sup>7</sup> Maerns v. Central R. R. of N. J., 163 N. Y. 108, 57 N. E. 292 (1900).