

Statement of the Case.

relief in the suit in equity. *Butler v. Eaton*, 141 U. S. 240; *Ballard v. Searls*, 130 U. S. 50.

It follows from what we have said that the first question certified from the United States Circuit Court of Appeals for the Sixth Circuit must be answered in the affirmative and the second in the negative, and that the other questions propounded require no reply.

Judgment in No. 53 reversed and cause remanded to the Circuit Court with directions for further proceedings in conformity with this opinion.

In No. 1025, the answers to the first and second questions above indicated will be certified.

MITCHELL v. NEW YORK, LAKE ERIE AND
WESTERN RAILROAD COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

No. 71. Argued December 6, 1892.—Decided December 12, 1892.

A direction of the Circuit Court to the jury to find for the defendant in an action against a common carrier for causing the death of a passenger, on the ground that the evidence did not establish negligence on the part of the carrier, and did show contributory negligence on the part of the passenger, is approved.

THIS action was brought under an act of the legislature of the State of New Jersey, to recover damages for the death of the plaintiff's intestate, caused by the neglect of the defendant. The facts claimed to be established were substantially these. On the 15th of November, 1887, at about half-past nine in the evening, the plaintiff's intestate, a lad about sixteen years old, his brother Henry, a young man named Robert Henry, and a number of other lads, got on a coal train of the defendant at the Bergen end of the tunnel which runs from

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that place to Hoboken, in order to go through this tunnel on coal trains of the defendant. The train was sixty or seventy cars in length. The lads were on separate cars sitting on the coal. Lawrence Mitchell, the plaintiff's intestate, was sitting on the end on top of the car, his feet hanging over down between the cars. As the train approached First Street there was a sudden jerk which threw the lads on the cars into various positions, Lawrence falling down between two cars. He was found lying alongside the track with one leg off, and two days after died from the effects of his injuries.

When the evidence was in, the court said: "I will direct a verdict for the defendant on the ground that there is not sufficient evidence to justify a recovery upon the case as it stands. There is not sufficient evidence of negligence on the part of the defendant, and the evidence proves concurring negligence on the part of the deceased."

Exceptions were taken to this instruction and this writ of error was sued out to review it.

Mr. Hermon H. Shook for plaintiff in error.

Mr. Charles Steele and *Mr. William D. Guthrie* for defendant in error; but the court declined to hear them.

THE CHIEF JUSTICE: A verdict for the defendants was directed in this case, on the ground that there was not sufficient evidence to justify a recovery. We concur in that view, and therefore affirm the judgment.

Judgment affirmed.