

226 U. S.

Counsel for Plaintiff in Error.

allowed. Nothing could more aptly illustrate the necessity for this conclusion than by directing attention to the result which would inevitably follow from taking another view. Thus it may not be doubted that the express object of the Personnel Act was to give a right of retirement for long and distinguished services, for wounds contracted in the course of the service as distinguished from the ordinary right to retire. And yet if the construction of the statute now urged were to be upheld it would follow that an assimilation was made by the Personnel Act not only between the pay of officers on the active list of the Navy and those of the Army, but also between officers of the Navy themselves by putting on a parity as to retirement and retired pay all officers of the Navy, irrespective of the meritorious or non-meritorious character of their services and despite the clear distinction in that regard expressly provided for by the terms of the Personnel Act.

Affirmed.

ANDERSON, ADMINISTRATRIX, *v.* SMITH.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

No. 91. Argued December 17, 1912.—Decided January 6, 1913.

The evidence in this case not showing that the injury suffered by the servant was caused by failure of the master to provide a safe place or proper appliances, the trial court rightly took the case from the jury, and directed a verdict for defendant.

35 App. D. C. 93, affirmed.

THE facts are stated in the opinion.

Mr. Leonard J. Mather, with whom *Mr. John Doyle Carmody*, was on the brief, for plaintiff in error.

Mr. H. Prescott Gatley, with whom *Mr. Samuel Maddox* and *Mr. Barry Mohun* were on the brief, for defendant in error.

Memorandum opinion, by direction of the court, by
MR. CHIEF JUSTICE WHITE.

Charles P. Anderson was one of several workmen engaged in tearing down an old building in Georgetown in the District of Columbia. The building had been demolished as far as the first floor, and it became necessary to take down a large doorframe. While Anderson was engaged with others in that work the frame fell upon him and caused injuries from which he died. An administratrix was appointed and brought this action against the employer of Anderson to recover damages, basing the right of action upon alleged negligence in failing "to provide a reasonably fit, proper and safe place" for Anderson to work, and also in failing "to furnish reasonably fit and proper machinery, reasonable adequate and sufficient tackle or implements, or a reasonably safe and proper number of men for the removal of such doorframe." At the trial, on the close of the evidence for the plaintiff, the court being of opinion that there was an utter failure of the proof to sustain the allegations of negligence, directed the jury to return a verdict for the defendant, and the judgment entered on the verdict was affirmed by the Court of Appeals of the District. (35 App. D. C. 93.) This writ of error was then prosecuted.

Without attempting to state the evidence, we think there is no room whatever for the contention that the court below erred in affirming the action of the trial court in taking the case from the jury. We say this because, adopting the view most favorable to the plaintiff of the evidence, it affords not even a shadow of ground for con-

226 U. S. Argument for Plaintiff in Error.

cluding that the injury suffered was caused by the failure of the master to perform the positive duty resting on him to exercise reasonable care to provide a safe place for the work or proper appliances.

Affirmed.

ILLINOIS CENTRAL RAILROAD COMPANY v.
HENDERSON ELEVATOR COMPANY.

ERROR TO THE COURT OF APPEALS OF THE STATE OF
KENTUCKY.

No. 105. Argued December 19, 1912.—Decided January 6, 1913.

Failure to post rates does not estop the carrier from collecting the published tariff rate notwithstanding a lower rate may have been quoted to the shipper. *Kansas City Southern Ry. Co. v. Albers Commission Co.*, 223 U. S. 573.

138 Kentucky, 220, reversed.

THE facts are stated in the opinion.

Mr. Edmund F. Trabue, with whom *Mr. Blewett Lee*, was on the brief, for plaintiff in error:

The decision below restores the evil of rebates. Its effect is to give the shipper a lower rate than other shippers who had to pay for their transportation according to the published rates. It forces the carrier to pay the shipper a rebate from the lawful rate. If the judgment below can stand, an effective way has at last been found to guarantee shippers against future changes of railroad rates, and the decision in *Armour v. United States*, 209 U. S. 56, approved in *Phila. &c. Co. v. Schubert*, 224 U. S. 603, 615, becomes a dead letter. *Texas & Pacific Ry. Co. v. Mugg*, 202 U. S. 242, controls this case.