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Torts—Duty Toward Trespassers: Objective Test

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DUTY TOWARD TRESPASSSERS: OBJECTIVE TEST

Plaintiff, a six year old boy, entered defendant's railroad yard and climbed onto a ladder attached to one of the boxcars of a train. As the train began moving, one of defendant's employees ran toward the plaintiff, and while about three or four cars away from him, shouted to the lad to get off the train. Immediately thereafter, plaintiff fell from the car and was injured by the moving train. The question presented, in an action to recover for the youth's injuries, *Lo Casto v. Long Island R.R.Co.*,[66] was whether the actions of this employee constituted a breach of the duty owed to plaintiff-trespasser. The Supreme Court entered judgment on verdict for plaintiff, but was reversed by the Appellate Division. The reversal was affirmed by the Court of Appeals.

Generally, one's only duty to trespassers is to abstain from inflicting intentional, wanton or wilfull injuries.[67] Two prior decisions of the Court seem to lay a frame of reference upon which to assess the instant decision. In *Ansteth v. Buffalo Ry. Co.*,[68] a conductor came onto the car platform on which a youth was standing and reached for the boy. In allowing recovery, the Court held the acts of the employee improper and unnecessarily dangerous, and therefore a breach of defendant's duty to a trespasser. In so holding, the Court said the boy was justified in believing violence to his person was imminent. In *Ralff v. Long Island R.R.Co.*,[69] however, on facts similar to those of the instant case, except that plaintiff did not see the person who was shouting at him, though he heard the shouting, recovery was denied. Mere calling to a plaintiff to get off the train, said the Court, cannot constitute the wilfull conduct required.

Although fear of violence to his person may well have caused the injury producing incident in the instant case, the Court makes it clear that the test of breach of duty to the trespasser is judged by an objective standard. Fear resulting from acts occuring three or four cars away from the plaintiff cannot, as a matter of law, operate to sustain a verdict requiring expectation of imminent violence.

WORKMEN'S COMPENSATION

SUFFICIENCY OF CAUSAL RELATIONSHIP BETWEEN ACCIDENT AND DEATH

Plaintiff, a sixty year old truck driver, was operating his employer's truck when it was struck by another vehicle. The impact caused him to be thrown to the pavement and rendered unconscious for several minutes. A medical examination revealed that he had suffered various abrasions, bruises and soreness throughout his shoulders and chest area. Plaintiff made no complaints of a cardiac nature and the doctor found no evidence of any cardiac ailment.

66. 6 N.Y.2d 470, 190 N.Y.S.2d 366 (1959).
67. Carbone v. Mackchil Realty Corporation, 296 N.Y. 154, 71 N.E.2d 447 (1947).
68. 145 N.Y. 210, 39 N.E. 708 (1895).
69. 266 A.D. 794, 41 N.Y.S.2d 620, *aff'd* 292 N.Y. 656, 55 N.E.2d 518 (1944).