Chapter 1 : Legal Ads - Crawford County Legal Journal

mary e. minton, administratrix for the estate of sylvester t. minton v. kenneth d. bradshaw; and lake cumberla annotate this case.

Fisk, Deceased, Plaintiff-appellee, v. United States of America, Defendant-appellant, F. Boyd Hovde, Indianapolis, Ind. On appeal the Government makes two assignments of error. Twenty-two years later, in , the decedent consulted a physician with complaints of hoarseness. Following the operation the surgeon informed the decedent in early that the scarring was related to the previous injection of dye, but that the decedent need not be concerned about it. Two years later the decedent sought treatment again, complaining of dizziness and blackouts. His physician at that time diagnosed his problem as artery disease caused by the dye-induced scarring. Surgery revealed that scar tissue was compressing the left carotid artery and impeding the flow of blood to the brain. Another subsequent operation sought to alleviate the problem by a carotid artery bypass. In the decedent submitted an administrative claim for damages, based on the malpractice. The claim was denied, and the decedent filed suit in the district court for personal injury. In the decedent was hospitalized again, and one month later he died from complications of pharyngeal ulceration and esophageal stenosis caused by the dye-induced scarring. An administrative claim for wrongful death was filed and denied, and the complaint was re-docketed with a new civil action number. The trial court found that the Government had negligently performed the dye injection, that that negligence caused the death of the decedent, and that the plaintiff was damaged thereby in the above-mentioned amount. The Government contends that when, as here, the same events or injuries which give rise to a malpractice claim also give rise to a claim for wrongful death, federal law establishes that the date upon which the malpractice claim accrued is also the date upon which the wrongful death claim accrued, and that unless a timely suit for personal injury is filed, any subsequent wrongful death action is barred. The Government thus characterizes the issue as one of conflict between state law, which it concedes, "preserves a cause of action for wrongful death when the preceding personal injury cause of action is barred by the statute of limitations," and federal law, which it contends bars such a cause of action when it is based upon the same acts of negligence which gave rise to a time-barred personal injury claim. The FTCA was passed in to remove some of the protections of the doctrine of sovereign immunity. By its terms it exposes the Government to liability for personal injury or property damage caused by the negligence of any Government employee, "if a private person would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The determination of substantive liability is thus governed by whether state law gives rise to a cause of action for the conduct which was the basis of the complaint. United States, F. To avoid anomalous results as the result of geographic fortuity, however, the federal statute of limitations, set forth at 28 U. If the plaintiff has a cause of action against the Government under state law, federal law then controls as to whether the plaintiff has timely instituted his suit to recover on that cause of action. In re Estate of Pickens, Ind. Thus the statute creates a new and independent cause of action for wrongful death under state law. Turning to the question of when that cause of action accrues, we note that the Government concedes that in an "ordinary" wrongful death action under the FTCA, the federal rule is that the cause of action accrues upon the date of death. He cannot sue until the cause of action accrues, and the cause of action given by the statute We are persuaded that this general rule is the proper rule applicable to the instant case. To hold that a claim for wrongful death somehow accrues before the date of death would place the class protected by the statute in the legally untenable position of speculating about hypothetical or potential future injuries, for the damages awarded survivors under the wrongful death act, which include funeral and burial expenses, are not identical with those available in a personal injury action to the one actually injured, and remain indeterminate until death has occurred. Clearly no such claim would ever be justiciable even were an astucious plaintiff to lodge such a clairvoyant complaint, for courts simply cannot protect rights against "assumed potential invasions," Arizona v. Furthermore, we note that the question here is not one of choice between conflicting statutes of limitations or accrual dates, but rather one of ascertaining the intent of Congress in enacting the FTCA and its limitations period. It is therefore instructive to find in the

legislative history of the amendment which enlarged the FTCA limitations period to two years, that Congress apparently considered the actions for personal injury and for wrongful death as distinct and independent. See Young, F. We therefore hold that when a state statute creates an independent cause of action for wrongful death, it cannot accrue for FTCA purposes until the date of the death which gives rise to the action. The Government seeks to apply a different rule whenever a wrongful death action is premised upon acts of medical malpractice which would also give rise to a personal injury claim, but that claim has lapsed by operation of the statute of limitations. The Government argues that under the rule of United States v. The Government contends that these two elements were fulfilled in when a Government doctor informed the decedent that the scarring in his neck was "perhaps related" to the negligent acts of This argument, however, confuses the concepts of negligent act and claim. Here the wrongful acts of gave rise to two separate claims: Nor are we persuaded that this result is in conflict with the purposes of statutes of limitations in promoting the reliance and repose interests of litigants and foreclosing claims that have been allowed to languish until evidence has become stale or unavailable. The cause of death, of course, will still be a matter of proof, and the information cannot be definitely determined prior to the actual occurrence of death. Thus, if the decedent in the present case had been killed by a robber, or by virtue of an automobile accident, or even as a result of some disease not in any way related to the malpractice, the potential wrongful death would have remained just potential, and would have never accrued. Further, the elements of damages cannot be ascertained until the date of death. Evidence on these crucial matters cannot come into existence until death occurs, so there is no more danger of it becoming stale or lost within the two-year period than in other cases. Additionally, we note that any lack of evidence is as equally or more likely to be damning to the plaintiff, who bears the burden of proof on the liability issue, as it is to the Government. The Government also contends that because some states bar a wrongful death action when a personal injury action based on the same acts of negligence would have lapsed, a contrary rule would defeat the avowed Congressional intent of having a uniform rule govern the limitation of such claims. The Government cites the following cases as examples of the deviation in state law: Elliott, 8 Storey , A. City of Plattsburg, 13 A. Of these cases, only Myers applies the rule the Government urges. In Winn, the state statute was derivative and required that a wrongful death suit be brought within three years of the injury which caused death; the plaintiff had failed to comply and thus her wrongful death suit was barred. Because as we noted above, "we shall look to the law of the state for the purpose of defining the actionable wrong for which liability shall exist on the part of the United States, but to the act FTCA itself for the limitations period , However the court noted specifically that the cause had accrued at the date of death, N. City of Plattsburgh, 13 A. However, for the reasons discussed above, we are persuaded that the Indiana or majority rule is the better one. The Government also relies on Harrison v. The plaintiff in Harrison brought suit for loss of consortium based on service-related injuries to her husband, an Air Force officer. United States, U. None of those factors is applicable to the instant case, and it is clear that a wrongful death claim which does not fall within any of the statutory or judicial exceptions to the FTCA was intended by Congress to fall within the class of suits the Government consented to liability for when it enacted the FTCA. Finally we note that we need not reach the issue of whether a survivor could recover on a wrongful death theory in a case where the deceased has already prevailed and obtained a satisfied judgment in a personal injury case. The general state rule however seems to be that because the personal injury remedy is designed to make the injured party whole, such double recovery would be barred, and no state law cause of action would exist. Mayor of New York, 89 N. However, in light of our holding that the relevant accrual date for the claim sued upon here was the date of death, we need not reach the issue whether this finding is supported by evidence in the record. Accordingly, for the aforementioned reasons, the judgment of the district court is Affirmed.

Chapter 2 : Mary Reller Mette () - Find A Grave Memorial

Get this from a library! Mary E. Fell, as administratrix of the estate of W.D. Fell, deceased, plaintiff, respondent, vs. The Charleston, Cincinnati, and Chicago.

February 25, ; 2: Minton, Administratrix for the Estate of Sylvester T. Minton , administratrix for the estate of Sylvester T. Minton and the estate of Sylvester T. On June 21, , Mr. Minton was operating a tractor on a public roadway in Russell County, Kentucky, when the tractor was struck from behind by a commercial vehicle owned by Lake Cumberland and driven by Bradshaw in the course of his employment. Minton was transported by a co-worker to the Russell County Hospital and was treated for minor injuries. According to the record, Minton sustained an abrasion to the left leg and was discharged after about one hour. Minton was treated by his family physician Dr. Osias Villaflor Villaflor and neurosurgeon Dr. Minton complained of neck and Mrs. Minton would later allege that the pain was a direct result of the June 21, accident. Bradshaw and Lake Cumberland cite the record in support of their assertion that the injuries were minor. The Circuit Court found that Mr. Minton sustained only an abrasion on his left thigh. Minton, on the other hand, alleges that Mr. Minton sustained severe injuries. She does not cite the record in support of this assertion. See generally CR Tibbs, who stated that the neck and back pain was a result of a degenerative disc disease which pre-dated the accident. Minton was also examined by Dr. Mortara , who testified that Mr. Minton returned to work a few weeks after the accident and stopped working in December, Minton maintained below that Mr. Minton was unable to work due to severe pain. Minton stopped working due to the seasonal nature of his employment. Whatever the cause, it is uncontroverted that Mr. Minton returned to work around March, Minton alleged that Mr. Minton was in severe pain which worsened in mid to late As a result of the pain, it was alleged that Mr. Minton suffered from growing depression. Minton had a history of alcoholism, anxiety and depression which predated the accident, and that he was being treated for anxiety at the time of the accident. Minton committed suicide on December 18, She alleged therein that Bradshaw and Lake Cumberland were at fault in causing the June 21, accident, and that the accident and resultant injuries 3 Again, no citation to the record is made in support of this assertion. Bradshaw and Lake Cumberland admitted liability for the accident, but denied that it was the proximate cause of Mr. They also maintained that the suicide was a superseding cause of his death. The matter proceeded before the Circuit Court, which granted the motion of Bradshaw and Lake Cumberland seeking partial summary judgment on the wrongful death claim. Other issues not before us were retained for later adjudication. On February 1, , a final judgment was entered which incorporated the partial summary judgment on the wrongful death claim. Minton now argues that the Circuit Court committed reversible error in granting summary judgment on the wrongful death claim. Specifically, she maintains that there exists a genuine issue of material fact on the question of whether the accident proximately caused Mr. She also argues that Mr. We have closely studied the record, the law, and the arguments of counsel, and cannot find the Circuit Court erred in granting summary judgment. The focus of Mrs. Proximate causation is a question of fact rather than a question of law. The test for finding proximate causation is whether the injury is a natural and probable consequence of the negligent act, and it centers on the issue of foresee ability. Ohio Casualty Insurance Co. The test is applicable to both negligently created conditions and negligent conduct. The dispositive questions, then, is whether the Circuit Court erred in concluding that no genuine issue existed on the question of proximate causation. The question might also be stated in terms of foresee ability under Ohio Casualty Insurance Co. In order to prevail on appeal, Mrs. Minton must overcome the strong presumption that the Circuit Court was correct in this ruling. City of Louisville v. While the circumstances surrounding Mr. A moving party is entitled to summary judgment only "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Scansteel Service Center, Inc. The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor. Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any

issue of material fact. Even when viewing the record in a light most favorable to Mrs. Minton, we must conclude that summary judgment was appropriate. The question of whether the suicide was a superseding cause of Mr. We will note, though, that the Circuit Court properly treated it as a question of law rather than as a question of fact. See generally, House v. The Circuit Court found, and we believe properly so, that suicide is generally regarded as a superseding cause of death except under very limited circumstances not applicable to the matter at bar. As stated previously, this issue is moot since a plaintiff must establish proximate causation before the question of superseding causation can arise. For the foregoing reasons, we affirm the summary judgment of the Russell Circuit Court.

Chapter 3 : WHEELER v. KENNARD | Mass. () | mass | www.nxgvision.com

Nine months after great-great grandfather Arthur T. Bull, 57, died without a will on 30 January , his widow Mary Elizabeth (Blakeslee) Bull was appointed administratrix of his estate by the Surrogate Court of Cattaraugus Co., N.Y.

Boyd Hovde, Indianapolis, Ind. Twenty-two years later, in , the decedent consulted a physician with complaints of hoarseness. Following the operation the surgeon informed the decedent in early that the scarring was related to the previous injection of dye, but that the decedent need not be concerned about it. Two years later the decedent sought treatment again, complaining of dizziness and blackouts. His physician at that time diagnosed his problem as artery disease caused by the dye-induced scarring. Surgery revealed that scar tissue was compressing the left carotid artery and impeding the flow of blood to the brain. Another subsequent operation sought to alleviate the problem by a carotid artery bypass. In the decedent submitted an administrative claim for damages, based on the malpractice. The claim was denied, and the decedent filed suit in the district court for personal injury. In the decedent was hospitalized again, and one month later he died from complications of pharyngeal ulceration and esophageal stenosis caused by the dye-induced scarring. An administrative claim for wrongful death was filed and denied, and the complaint was re-docketed with a new civil action number. The trial court found that the Government had negligently performed the dye injection, that that negligence caused the death of the decedent, and that the plaintiff was damaged thereby in the above-mentioned amount. The Government contends that when, as here, the same events or injuries which give rise to a malpractice claim also give rise to a claim for wrongful death, federal law establishes that the date upon which the malpractice claim accrued is also the date upon which the wrongful death claim accrued, and that unless a timely suit for personal injury is filed, any subsequent wrongful death action is barred. The Government thus characterizes the issue as one of conflict between state law, which it concedes, "preserves a cause of action for wrongful death when the preceding personal injury cause of action is barred by the statute of limitations," and federal law, which it contends bars such a cause of action when it is based upon the same acts of negligence which gave rise to a time-barred personal injury claim. By its terms it exposes the Government to liability for personal injury or property damage caused by the negligence of any Government employee, "if a private person would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The determination of substantive liability is thus governed by whether state law gives rise to a cause of action for the conduct which was the basis of the complaint. United States, F. To avoid anomalous results as the result of geographic fortuity, however, the federal statute of limitations, set forth at 28 U. If the plaintiff has a cause of action against the Government under state law, federal law then controls as to whether the plaintiff has timely instituted his suit to recover on that cause of action. In re Estate of Pickens, Ind. Thus the statute creates a new and independent cause of action for wrongful death under state law. He cannot sue until the cause of action accrues, and the cause of action given by the statute We are persuaded that this general rule is the proper rule applicable to the instant case. To hold that a claim for wrongful death somehow accrues before the date of death would place the class protected by the statute in the legally untenable position of speculating about hypothetical or potential future injuries, for the damages awarded survivors under the wrongful death act, which include funeral and burial expenses, are not identical with those available in a personal injury action to the one actually injured, and remain indeterminate until death has occurred. Clearly no such claim would ever be justiciable even were an astucious plaintiff to lodge such a clairvoyant complaint, for courts simply cannot protect rights against "assumed potential invasions," Arizona v. It is therefore instructive to find in the legislative history of the amendment which enlarged the FTCA limitations period to two years, that Congress apparently considered the actions for personal injury and for wrongful death as distinct and independent. See Young, F. We therefore hold that when a state statute creates an independent cause of action for wrongful death, it cannot accrue for FTCA purposes until the date of the death which gives rise to the action. The Government argues that under the rule of United States v. The Government contends that these two elements were fulfilled in when a Government doctor informed the decedent that the scarring in his neck was "perhaps related" to the negligent acts of This argument, however,

confuses the concepts of negligent act and claim. Here the wrongful acts of gave rise to two separate claims: Thus, if the decedent in the present case had been killed by a robber, or by virtue of an automobile accident, or even as a result of some disease not in any way related to the malpractice, the potential wrongful death would have remained just potential, and would have never accrued. Further, the elements of damages cannot be ascertained until the date of death. Evidence on these crucial matters cannot come into existence until death occurs, so there is no more danger of it becoming stale or lost within the two-year period than in other cases. Additionally, we note that any lack of evidence is as equally or more likely to be damning to the plaintiff, who bears the burden of proof on the liability issue, as it is to the Government. The Government cites the following cases as examples of the deviation in state law: Elliott, 8 Storey , A. City of Plattsburg, 13 A. Of these cases, only Myers applies the rule the Government urges. In Winn, the state statute was derivative and required that a wrongful death suit be brought within three years of the injury which caused death; the plaintiff had failed to comply and thus her wrongful death suit was barred. Because as we noted above, "we shall look to the law of the state for the purpose of defining the actionable wrong for which liability shall exist on the part of the United States, but to the act FTCA itself for the limitations period , However the court noted specifically that the cause had accrued at the date of death, N. City of Plattsburgh, 13 A. However, for the reasons discussed above, we are persuaded that the Indiana or majority rule is the better one. The plaintiff in Harrison brought suit for loss of consortium based on service-related injuries to her husband, an Air Force officer. United States, U. None of those factors is applicable to the instant case, and it is clear that a wrongful death claim which does not fall within any of the statutory or judicial exceptions to the FTCA was intended by Congress to fall within the class of suits the Government consented to liability for when it enacted the FTCA. The general state rule however seems to be that because the personal injury remedy is designed to make the injured party whole, such double recovery would be barred, and no state law cause of action would exist. Mayor of New York, 89 N. However, in light of our holding that the relevant accrual date for the claim sued upon here was the date of death, we need not reach the issue whether this finding is supported by evidence in the record.

Chapter 4 : 59 Wn.2d , MARY E. GREGORY, as Administratrix, Appellant, v. TED SHANNON et al., Respo

Opinion for Mary E. Fisk, Special Administratrix of the Estate of Clarence J. Fisk, Deceased v. United States, F.2d â€" Brought to you by Free Law Project, a non-profit dedicated to creating high quality open legal information.

Second in a series on the settlement of my great-great grandfather Arthur T. Nine months after great-great grandfather Arthur T. Bull, 57, died without a will on 30 January , his widow Mary Elizabeth Blakeslee Bull was appointed administratrix of his estate by the Surrogate Court of Cattaraugus Co. Perhaps not the best time for Mary, who was simultaneously applying for Civil War pension benefits for herself and her two youngest children. That was certainly true of my great-great grandfather Arthur T. And as the surviving spouse, by law Mary was also the first one the court was obligated to turn to since Arthur left no will naming an executor. So on 13 Aug. Mary had no income at the time. Where could this money come from? Davie and William H. Crandall â€" each with a different relationship to the Bull family. Civil War pension benefits. On that application, Mr. Bull and family and from general reputation. So was he a friend of the family? Whatever the circumstances, on 13 Aug. Handwritten portions are underlined below. Davie of Salamanca N. Andâ€¦that he owns personal estate in the town aforesaid and that its value is not less than two thousand dollars that it consists of bonds. Nor was he the only one, for William H. Crandall also co-signed the bond and listed his assets. Crandall and his unique relationship to the Bull family in the next post.

Chapter 5 : NOTICE OF ADMINISTRATION Â» West Virginia Legals

Opinion for Mary E. Cearley, Individually and as Administratrix of the Estate of Jimmy C. Cearley Cynthia, F.3d â€" Brought to you by Free Law Project, a non-profit dedicated to creating high quality open legal information.

Court of Appeals, Eighth Circuit Submitted: Paddock, Texarkana, TX, on the brief , for Appellee. Cearley Cearley , who suffered a fatal fall from a railroad tank car. For the reasons stated below, we reverse the order of the district court and remand for further proceedings consistent with this opinion. Jurisdiction 2 Jurisdiction was proper in the district court under 28 U. Jurisdiction is proper in this court under 28 U. Background 3 The essential background facts are undisputed. On December 15, , Cearley and his co-worker, James Dodson, were unloading bromine from a tractor trailer onto a railroad tank car that was parked on railroad tracks running through the premises of their employer, Great Lakes Chemical Company, in El Dorado, Arkansas. Dodson left the scene for about ten minutes. When he returned, he found Cearley lying dead next to the tank car. There were no witnesses to the accident, but it is assumed for purposes of these proceedings that Cearley died from injuries sustained from falling off a fixed platform atop the tank car, approximately twelve feet above ground level. Upon inspection, the tank car showed no signs that any railings were missing or damaged. The platform has a railing around it which is thirty inches tall. Appellees asserted, among other claims, a claim of negligence per se on the ground that the inch height of the railing failed to comply with 29 C. Permission to proceed with this interlocutory appeal was then granted by our court. Discussion 6 We review a denial of summary judgment de novo. The question before the district court, and this court on appeal, is whether the record, when viewed in the light most favorable to the non-moving party, shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Where the unresolved issues are primarily legal rather than factual, summary judgment is particularly appropriate. Upon careful review of the pertinent statutes, regulations, and case law, we agree. The Supreme Court held that certain federal regulations could preempt state tort law claims regarding grade crossings and train speed. The Court then explained: Thus, pre-emption will not lie unless it is the clear and manifest purpose of Congress. Evidence of pre-emptive purpose is sought in the text and structure of the statute at issue. That clause, 45 U. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce. The question thus becomes whether or not a federal regulation "substantially subsumes" state tort law regarding platform safety features, including safety railings, on rolling tank cars. Appellants cite, as preempting this subject matter, an FRA regulation addressing safety features on "tank cars without underframes," which is the type of tank car from which Cearley fell. It provides in relevant part: One operating platform, two ladders and safety railing. Not required if all fittings used in the loading and unloading of the tank car are accessible from ground or end platform.

Chapter 6 : SHAW vs. OGDEN, Mass.

United States Court of Appeals,Eighth Circuit. Frank STEVENSON, Cross-Appellant/Appellee, Rebecca Harshberger, Administratrix of the Estate of Mary E. Stevenson, Deceased, Appellee, v.

Supreme Judicial Court of Massachusetts, Suffolk. Article Seventh left personal property in trust to pay the net income "to my nephew Waldo Kennard Waldo died in His widow, Margaret, is living. Adams predeceased Waldo leaving no issue. Harry died on December 20, , intestate, without issue, survived by his widow, Mary. Thus the stated time for termination of the trust under Article Seventh has not arrived, but no beneficiary specified therein to receive two thirds of the income is now living. The final decree orders in respect of the trust under Article Seventh that no portion of the principal now be distributed, that from and after December 20, , one third of the net income be paid to Margaret until her death, and that for the same period two thirds of the net income be paid to the residuary legatees under Article Tenth of the will, their identity and shares having been fixed by the decree of that court on March 29, But although claims of appeal were filed on behalf of next of kin claiming under Article Seventh, these appeals have been withdrawn, and those next of kin interested to put forward claims under Article Seventh state in their brief that they "have acquiesced with the decree We discern no intent in Article Seventh to dispose of the two thirds of income of the continuing trust in the event that Adams and Harry should predecease Margaret leaving no issue. We conclude that the possibility that Margaret would survive Adams and Harry and their issue was not envisaged. The conflicting intent to provide for Margaret to the extent of one third of the income, by continuing the trust of all of the fund for her life, is express. This, however, would not give Margaret precisely what Article Seventh provides, and it would determine the next of kin as of a date prior to the date fixed by Article Seventh. This, we hold, is not a case for such reconstructive action. The possibility of adopting it does not establish error in the decree below. In the Hussey case the gift in trust was to R and M or the survivor of them for the life of P. R and M had both died R first and P lived. We think the principle applied in the Hussey case is inapplicable. The gift over to issue shows an intent to limit the gifts for Adams and Harry to their lives. The rule is applicable that where a construction in support of a claimed interest depends upon conjecture it may not be adopted. Bank, ante, 1, Inasmuch as Article Seventh is not the residuary clause, Mary is not helped by the rule of construction that a testator is presumed to intend to dispose of all his property by the will. We agree with Mary that Article Seventh shows that it was not in express contemplation that any interest of the trust thereunder would pass under the residuary clause. But that is not a basis for determining that Isabella had an intent in respect of the events which have developed. There is, of course, the manifest intent of the residuary clause that all interests not otherwise disposed of, for whatever reason, pass thereunder. No other intent being shown this intent prevails. Accordingly, the decree of the Probate Court is affirmed. Costs and expenses of this appeal may be allowed in the discretion of the Probate Court. Such a holding would cut off the rights under the decree of those claiming under Walter B. Perkins, a nephew of Isabella, who died on October 4, , without issue, represented herein by the respondent Ellen B. She has waived no rights under the Probate Court decree.

Chapter 7 : An administration bond for Mary E.(Blakeslee) Bull | MOLLY'S CANOPY

TORT by the administratrix of the estate of Russell J. Shaw, who was the driver of a delivery wagon, for personal injuries sustained by the plaintiff's intestate on June 6, , and alleged to have been caused by the defendant's negligence in permitting the limb of a tree to hang so low over the driveway of the defendant that it struck the top of the covered wagon in which the plaintiff's.

Negligence, In maintenance of private way. If the driver of a covered delivery wagon in passing by implied invitation through a private driveway, which he has used almost daily with the same wagon for about eight months, is thrown from the wagon and injured by reason of the top of the wagon striking an overhanging "big stout limb" of a large tree, conspicuously visible, which only could be hit by the top of the wagon when the wagon was driven at the outside edge of the gutter of the driveway, no action can be maintained by the driver, or by the administrator of his estate, against the person who maintained the tree and invited him to enter the driveway, because, as to this driver at any rate, such person was not negligent in maintaining the branch or in failing to warn him of a possible danger from it. Writ dated August 20, In the Superior Court the case was tried before Crosby, J. The material facts which could have been found upon the evidence Page are stated in the opinion. At the close of the evidence the defendant asked the judge to order a verdict for the defendant. The defendant alleged exceptions. Lowell with him, for the defendant. Appleton with him, for the plaintiff. The case was submitted to the jury under instructions which do not appear to have been excepted to and which we now must take to have been full and accurate, unless the defendant was entitled to have a verdict ordered in her favor. That is the only point which we have to consider. He had come upon the premises and was using the driveway of the defendant at her implied invitation. She owed to him the duty of using reasonable care to keep the driveway in a safe condition for him to use, or at least of warning him against any dangers attendant upon its use which were not known to him and which either were known or in the exercise of reasonable care ought to have been known to her. Pray, 10 Allen Boston Music Hall, Mass. Scott, [] 1 Q. For the purposes of the case at bar we need not attempt to distinguish between these different duties. The difficult question is whether there was any evidence of negligence on the part of the defendant in allowing the branch to overhang the driveway or in not warning the intestate of the danger that might arise therefrom. There was no defect in the driveway itself. It was sufficiently wide and well wrought. There was only a narrow space near the outside edge of the gutter where the branch Page was near enough to the surface of the ground to reach the top of the wagon driven by the intestate. It is no unusual thing to find trees very near to the edge of a private driveway and overhanging it as this one did. Both the tree and the branch were conspicuous objects, not only plain to be seen, but scarcely capable of not being seen by any one using the driveway. The intestate had been using the driveway, with the tree and the branch in the same position, almost daily with the same wagon for some eight months before the happening of the accident, driving immediately under the branch, as the defendant knew. She had a right to believe that he was fully acquainted with the situation and with the risk of going to or near to the very edge of the gutter at this point. Under these circumstances we are of opinion that as to him at any rate she was not negligent either in maintaining the branch or in failing to warn him of a possible danger therefrom. If she had given the same implied invitation to one who was a mere stranger to the locality, or to one whose team reached above the height of the branch, as in Embler v. Wallkill, 57 Hun, , a different situation would have been presented. A verdict for the defendant should have been ordered in accordance with her request; her exceptions must be sustained; and under St.

Chapter 8 : "Mary E. Sweat , Administratrix, etc., v. L.C. Stinnett"

His widow, as administratrix of his estate, commenced this action against the defendants Ted Shannon and Jane Doe Shannon, his wife, and Delbert L. Wisbey, to recover damages for the death of her husband, for his pain and suffering during his lifetime, and for property damages.

By challenging the sufficiency of the evidence, a party admits its truth and all inferences that can reasonably be drawn therefrom; and in ruling upon such a motion, a trial court must interpret the evidence in the light most favorable to the party against whom the motion is made, and most strongly against the moving party. Action for property damage, pain and suffering, and wrongful death. Horowitz, of counsel and June Fowles, for appellant. Gregory, as a result of an automobile accident, sustained a fractured sternum and other injuries. He was treated for the injuries by Dr. September 13, , Dr. Brown referred him to Dr. November 18, , Mr. Gregory went to Dr. He was short of breath and extremely ill. Gregory was immediately sent to a hospital, where he died the following day. His widow, as administratrix of his estate, commenced this action against the defendants Ted Shannon and Jane Doe Shannon, his wife, and Delbert L. Wisbey, to recover damages for the death of her husband, for his pain and suffering during his lifetime, and for property damages. The defendants admitted legal liability for the accident and the resulting property damage, but denied that there was any causal relationship between the injuries sustained by the deceased and his death. The case was tried to a jury. Judgment was entered accordingly. The plaintiff has appealed. The cause is before this court on a short record, consisting only of the testimony of Dr. In ruling upon the motion, the trial court must interpret the evidence in the light most favorable to the party against whom the motion was made appellant , and most strongly against the movant party respondents. The most favorable testimony of Dr. Burkhart on this point was as follows: What is your opinion, Doctor, after having reviewed the case, looked at the man and treated him, heard his statement to you of the kind of injury that he sustained, of the relationship between this injury and his decline and death? I think it is definitely related. I feel that there was definitely a relation. Was it the efficient cause?. No; I think it was the exciting cause. That is sort of the trigger that sets off a mechanism that is already there. The trial judge relied upon our decision in Bland v. In that case, the doctor testified in terms of possibilities and probabilities. He did not affirmatively connect the death to the injury. It is that salient fact which distinguishes the Bland case from the one now before us. We hold that the testimony of Dr. Burkhart was sufficient to establish a prima facie case of causation. The judgment is reversed, and the cause remanded with instructions to grant a new trial.

Chapter 9 : John Allen Mette () - Find A Grave Memorial

Get this from a library! Mary Ellen Atkinson, administratrix of Richard Atkinson, deceased. February 11, -- Committed to the Committee of the Whole House and ordered to be printed.