

**Doyle Vs. Union Pacific Ry. Co.**

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**Appeal No. :** 147 U.S. 413

**Appellant :** Doyle

**Respondent :** Union Pacific Ry. Co.

**Judgement :**

Doyle v. Union Pacific Ry. Co. - 147 U.S. 413 (1893)

U.S. Supreme Court Doyle v. Union Pacific Ry. Co., 147 U.S. 413 (1893)

**Doyle v. Union Pacific Railway Company**

**Nos. 100, 101**

**Argued January 3, 1893**

**Decided January 23, 1893**

**147 U.S. 413**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF COLORADO*

## SYLLABUS

An agreement between a railroad company and an individual that the latter shall occupy a sectionhouse of the company and shall board there the sectionhands and other employees of the company at an agreed rate, the company to aid in collecting the payment out of the wages of the employees, does not create the relation of master and servant between the company and the individual, but does create a tenancy terminable at the will of the company.

In the absence of fraud, misrepresentation or deceit, a landlord is not responsible for injuries happening to his tenant by reason of a snow-slide or avalanche.

It is not reversible error in a judge of a federal Court to express his own opinion of the facts if the rules of law are correctly laid down and if the jurors are given to understand that they are not bound by such expressions of opinion.

The case is stated in the opinion.

Page 147 U. S. 414

MR. JUSTICE SHIRAS delivered the opinion of the Court.

In the early part of November, A.D. 1883, Marcella Doyle, a widow with a family of six children, agreed with the Union Pacific Railway Company to occupy the company's sectionhouse situated on the line of the railroad at or near Woodstock, in the County of Chaffee and State of Colorado, and to board at said sectionhouse such sectionhands and other employees of the company as it should desire at the rate of four and one-half dollars per week, to be paid by the persons so to be boarded, and the company agreed to aid her in collecting her pay for such board by retaining the same for her out of the wages of the employees so to be boarded.

Mrs. Doyle moved with her children into the sectionhouse, and continued in the discharge of her duties as boarding housekeeper until the 10th day of March, A.D. 1884, when a snowslide overwhelmed the sectionhouse, injured Mrs. Doyle, and crushed to death the six children residing with her.

Subsequently, Marcella Doyle brought, in the Circuit Court of the United States for the District of Colorado, two actions against the Union Pacific Railway Company -- one for her personal injuries, the other for damages suffered by her in the loss of her children, and which latter action was based on a statute of the State of Colorado.

The actions resulted in verdicts and judgments in favor of the defendant company, and the cases have been brought to this Court by writs of error. As the cases turn upon the same facts and principles of law, they can be disposed of together.

The record discloses that the facts of the case, as claimed by the respective parties, and certain admission by the defendant company, were stated in a bill of exceptions, and upon which instructions by the court were given which are made the subject of the assignments of error.

The bill of exceptions was as follows:

"Be it remembered that on the trial of this cause at the

Page 147 U. S. 415

November term, A.D. 1886, of the said circuit court, the defendant admitted, and such admissions were received in evidence before the jury:"

"That the plaintiff was at the several times named in the complaint a widow and the mother of the said Martin Doyle, Andrew Doyle, Christopher Doyle, Catharine Doyle, Marcella Doyle, and Maggie Doyle, mentioned and named in the complaint as the children of the plaintiff, and as having each and all been killed by a snowslide at Woodstock in the month of March, A.D. 1884."

"That her husband and the father of said children had died previously to their death. That each of said children was of the age and sex stated in the complaint, was each unmarried and had no child nor children, and had each lived with their said mother, making their home with her, up to the time of their death, and were each then living with the plaintiff, aiding and assisting her in and about making a living, and in and about her duties and labors in the keeping of the sectionhouse of

the defendant at Woodstock, in the County of Chaffee and State of Colorado, where said children were killed. That said children were all killed while in said sectionhouse, on the 10th day of March, A.D. 1884, by a snowslide, which then and there occurred from the mountainside above said sectionhouse. That said sectionhouse was built and used by the defendant as and for a sectionhouse and a place at which the section hands of the defendant who should work on said section could board and lodge."

"That on or about the 5th day of November, A.D. 1883 at the instance and request of the defendant, and for the mutual benefit of herself and the defendant, the plaintiff undertook and agreed with the defendant to keep for it, during its will and pleasure, its sectionhouse situated at or near Woodstock, on the line of its railroad, in the County of Chaffee and State of Colorado. That by the said agreement between her and the defendant, the plaintiff was to provide and furnish board at said sectionhouse for such sectionhands and other employees of the defendant as it should desire at the rate of four and one-half dollars per week, to be paid by the persons so furnished

Page 147 U. S. 416

with such board, but the defendant was to aid and assist the plaintiff in collecting her pay for such board by stopping and retaining the same for her out of the wages of those so furnished with such board. That plaintiff thereupon, to-wit, on the said 5th day of November, A.D. 1883, moved into said sectionhouse with her family, and entered upon the discharge of her duties as the keeper thereof, and remained there in the discharge of such duties until the occurrence of the snowslide, on the 10th of March, A.D. 1884. That the defendant did not at any time notify or apprise the plaintiff or either of her said children, or cause her or either of them to be notified or apprised, of the danger of a snowslide or snowslides or of the liability of a snowslide or snowslides at such place where said sectionhouse then was, or in that locality. And the plaintiff, further to maintain the issues on her part, introduced evidence tending to show that said sectionhouse was a one-story frame building, and was constructed in 1882, about the time that said railroad was first operated in that section of the country; was situated in the mountains, near the

base of a high and steep mountain, and in a place subject to snowslides, and dangerous on that account. That the sides of the mountain at the base of which was the house in question were marked by the tracks of former snowslides, but only those familiar with snowslides and their effects would know what they meant. That the defendant was aware of said danger at and before the time it engaged the plaintiff to keep its said sectionhouse. That the plaintiff and her said children had never before resided in a region of country subject to snowslides, and had no knowledge of snowslides or of their indications, or of the dangers incident thereto, and was not aware of the particular danger in question. That there was a prominence or hip on this mountainside, about ten or twelve hundred feet above the sectionhouse, which cut off a view of the mountainside above said hip from the sectionhouse or its immediate vicinity. That above said hip there was a large depression or draw on the mountainside extending from said hip to the summit, into which great quantities of snow fell and drifted during the winter season of each year, thus tending

Page 147 U. S. 417

to create snowslides of danger to persons in said sectionhouse or its vicinity. That this danger was not apparent even to a person having knowledge of snowslides and their causes without a view or examination of this mountainside above said hip. That the altitude of said sectionhouse was about 10,200 feet, and of the summit of said mount in nearly 12,000 feet. That the snowfall there was great in the winter season of each year, and that depressions on the mountainside were filled with snow by drifting. That the snowslide of March 10, 1884, which killed the said children, proceeded from this depression above said hip. That a snowslide of less dimensions, and of less scope and extent, occurred there in February, 1883, in the same place and from the same source, which reached to within about two hundred feet of said sectionhouse, and of which the defendant had knowledge at the time thereof."

"That the attention of the superintendent of the construction of said railroad and of said sectionhouse was called to the fact of such danger at or about the time said sectionhouse was built, by one of the civil engineers of said defendant who

assisted in locating the line of said railroad."

"That her said son Andrew Doyle was an employee of the defendant -- a sectionhand on the same section where said sectionhouse was located -- at the time he was so killed by said snowslide. That the plaintiff and her said children were in said sectionhouse at the time the said children were killed, and that neither of said children was aware of said danger before the said snowslide of March 10, 1884, occurred."

"That through this prominence or hip on the mountainside there was a chasm or draw from twenty to thirty feet wide, which continued on down to the sectionhouse, but became wider after leaving the hip. That with this draw another draw united about midway between the sectionhouse and the said hip, and formed one draw from their point of union to the sectionhouse."

"That this mountain is a part of the range of mountains known as the 'Continental Divide,' which divides the waters of the Atlantic from those of the Pacific. At this point above Woodstock station, the course of the mountain is nearly east

Page 147 U. S. 418

and west. This railroad passes this mountain by means of a tunnel called 'Alpine Tunnel,' which is to the westward of a line north of Woodstock, and descends this mountain at a heavy grade, along the side thereof, about midway between the sectionhouse and the said hip on the mountain (which hip is termed a 'projection of rocks' by some of the witnesses), and passes on to the eastward of Woodstock a considerable distance, where it turns, and, forming a kind of horseshoe shape, runs back again past Woodstock, but between the sectionhouse and said hip, the sectionhouse being below and distant from this lower track about two hundred and thirty feet, and the two tracks forming this horseshoe are both between the sectionhouse and said hip, and on a direct line from the sectionhouse up to the hip. The two tracks are about five hundred feet apart, the upper track being about seventy feet higher in point of altitude where they cross this line from the sectionhouse to the hip on the mountainside above. That there was a water tank

on the upper side of the lower track fifty or sixty feet to the westward of the sectionhouse, which water tank was injured by the snowslide of February, 1883."

"That the snowslide of March 10, 1884, spread out as it descended the mountain, so that where it passed over the lower railroad track, its space in width was six or seven hundred feet, and the sectionhouse was not far from the center of said snowslide track."

"That the contour of this mountain, beginning at the sectionhouse and ascending the mountain, is about as follows, to-wit: above the sectionhouse, it slopes slowly to the first railroad track; then there is a rockslide; then there is a bench above that, and on the same level of the upper railroad track, and above that a steep gorge, and on each side of said gorge there is a thin belt of timber, and between these belts of timber and along the gorge there is a space from three to four hundred feet in width of nothing but rock, with a very steep slope, and above this slope some very steep rocks (the hip on the mountainside), and above this hip is a large basin or depression extending on up the mountainside three or four thousand feet long to the summit of the mountain, which has an elevation or

Page 147 U. S. 419

altitude of about 11,500 feet, the mountainside above the hip being very steep, having a slope of more than thirty-three degrees, and from the hip down there is quite a precipitous piece of rock, not perpendicular, but quite steep, and after or below that the slope is at an angle of about twenty-five degrees. In the basin above the hip there is no timber, and in and about the sectionhouse there is a space of eight or nine hundred feet square on which there is no timber except three or four trees."

"That the timber on the mountainside was sparse and scattered. That only a few trees were carried down by the snowslide. That snowslides do not always follow beaten tracks made by former snowslides on the same mountainside, but frequently depart therefrom. That the snowslide of March 10, 1884, separated into broken fragments or divisions before reaching the base of the mountain, one of

which struck the sectionhouse, resulting in the injuries complained of."

"That the winter of 1883-84 was severer, and the snow fell some deeper, than the winter previous thereto, and that it snowed heavily and continuously from about the 1st of March to the 10th of March, 1884, and the trains had ceased to run on account of the snow. That ordinarily in the winter season the snow was from five to seven feet deep in said locality in places where it did not drift, and after it had settled compactly. That it drifted greatly, filling up basins and depressions on the mountainsides. That there were rockslides and existing evidences of former snowslides on this mountainside above said sectionhouse."

"That the snowslide of February, 1883, deposited snow and debris on the upper track of the railroad above said sectionhouse from twenty to twenty-five feet deep, and for a considerable space of time from then, during the remainder of that winter and the following spring, the said railroad was not operated on account of the snow."

"And the defendant, to maintain the issues on its part, introduced evidence tending to prove that said sectionhouse was built below the said tracks and behind, and protected by a

Page 147 U. S. 420

thick growth of timber above and between said sectionhouse and the mountain; that there were no marks or tracks of former snowslides directly above or in the vicinity of said sectionhouse; that the defendant was not aware of any danger from snowslides at the place where the sectionhouse was built, but, on the contrary, that the officers of the company had carefully examined the locality where the same was built, and the contour of the mountains above the same to the summit of the range, and that said sectionhouse was built at that place because the officers of the company thought that it was [a?] safe place, and could not be endangered by snowslides, which were apt to occur in that part of the country; that the prominence or hip spoken of was a protection against snowslides which might occur on the mountainsides above said sectionhouse; that an examination of the

ground, timber, and rocks in the vicinity of where the house was built, and above on the mountainside, showed that there had not been a snowslide there for at least two hundred years; that the snowslide of March 10, 1884, was caused by a storm of unprecedented severity and duration, and that the same came down through the timber above said house, breaking down and carrying with it standing trees, from bushes up to trees two feet in diameter; that the snowslide mentioned as occurring in February, 1883, came down a considerable distance to the north of where the one came down in 1884, and that the snowslide in 1883 did no damage except to cover up a short distance of the railroad track and break in some boards of the house under the water tank; that the attention of the superintendent of construction of said railroad was not called by anyone to the fact of there being any danger from snowslides at the place where said sectionhouse was built, but that the conversation or notice referred to was in regard to a place a mile or more further up Quartz Creek; that the said Andrew Doyle had been an employee of the defendant as a sectionhand, but had quit work some days before on account of the road's being blockaded by snow and all attempts to open it having been abandoned, and for ten days or more before the snowslide no work whatever was being done by defendant on said road for

Page 147 U. S. 421

a distance of several miles each way from said Woodstock; that said prominence or hip on the mountainside mentioned by the witnesses tended to protect said sectionhouse and its immediate locality from snowslides; that there was no chasm or draw immediately above said sectionhouse, and that whatever formation of that kind there was on said mountain was a distance of two hundred feet or more north of said sectionhouse; that said sectionhouse was broken down by said snowslide of March 10, 1884, by a spreading out of the snow as it came down the mountain, and that said sectionhouse was on the southerly side of said snowslide; that the gorge referred to is simply an opening a few feet wide in the ridge of rock referred to as the 'hip' or 'prominence;' that a short distance above said prominence, the general timberline of the country is reached, above which no timber occurs; that there was a considerable amount of timber between said sectionhouse and the

first railroad track, and a thick growth of large timber immediately above the first railroad track, extending up some distance to wards the second track of the loop, and some scattering timber above the upper track; that there are no rockslides or existing evidences of former snowslides on the mountainsides immediately above said sectionhouse."

"And the foregoing was all the evidence in the case."

To the answers of the court to the prayers for instructions, and to the charge, the plaintiff has filed thirteen assignments of error.

The twelfth assignment alleges that "the circuit court erred in charging the jury substantially to the effect that they must find for the defendant," and in the brief of the plaintiff in error it is asserted that the answers of the court to the several requests for instructions were in effect directions to the jury to find for the defendant.

Although in point of fact the court did not give the jury peremptory instructions to find for the defendant, but left the cases to them on instructions under which they might have found verdicts for the plaintiff, yet the validity of the plaintiff's exceptions to the court's treatment of the cases may be conveniently tested by assuming for the present that the

Page 147 U. S. 422

charge and instructions legally amounted to a direction to find for the defendant. If an examination of the facts and of the principles of law involved warrants us in concluding that the court would have been justified in so doing, it will not be necessary to consider each and every assignment of error nor to minutely scan isolated expressions used by the court.

The first question to be determined is what was the relation between the plaintiff and the railway company? Was Mrs. Doyle a servant or employee of the company, aiding in the transaction of its business and subject to its directions, or was she a tenant at will holding the premises by an occupation during the will of the

company? The facts averred by the plaintiff show that the company was not interested, in a legal sense, in the management of the boarding house; did not receive the board money, pay the expenses, take the profits, or suffer the losses. The company could not call upon her for any account, nor could she demand payment from the company for any services rendered by her in carrying on the boarding house. The fact that the company agreed to aid her in collecting what might be due to her from time to time by the boarders, by withholding moneys out of the wages payable to them by the railroad company, did not convert Mrs. Doyle into a servant of the company or change her relation to the company as a tenant at will of the company's house. Such an arrangement might equally have been made if Mrs. Doyle had been the owner of the house. The court below was not in error in holding that the relation of the parties was that of landlord and tenant.

If, then, such was the relation of the parties, upon what principle can a liability for the damages occasioned by the snowslide be put upon the company? There was neither allegation nor proof of fraud, misrepresentation, or deceit on the part of the defendant company as to the condition of the premises. Indeed, it was not even pretended that the catastrophe was in any way occasioned by the condition of the house.

It was, indeed, alleged that the sectionhouse was built near the base of a high and steep mountain, and in a place subject

Page 147 U. S. 423

to snowslides and dangerous on that account; that the company was aware of said danger; that the plaintiff and her children had never before resided in a region of country subject to snowslides, and had no knowledge of snowslides or of their indications, or of the dangers incident thereto, and that the company did not at any time notify or apprise the plaintiff or her children of the danger of snowslides or of the liability of snowslides at such place where said section then was, or in that locality, and upon this alleged state of facts it was contended that the jury had a right to find that the railway company was guilty of carelessness or disregard of duty toward the plaintiff such as to make it liable in these actions.

It is, however, well settled that the law does not imply any warranty on the part of the landlord that the house is reasonably fit for occupation; much less does it imply a warranty that no accident should befall the tenant from external forces, such as storms, tornadoes, earthquakes, or snowslides. The law is thus stated in a well known work on Landlord and Tenant:

"There is no implied warranty, on the letting of a house, that it is safe, well built, or reasonably fit for habitation; or of land that it is suitable for cultivation or for any other purpose for which it was let, and where a person hired a house and garden for a term of years to be used for a dwelling house, but subsequently abandoned it as unfit for habitation in consequence of its being infested with vermin and other nuisances which he was not aware of when he took the lease, the principle was laid down, after an elaborate review of all the cases where a contrary doctrine seemed to have prevailed, that there is no implied contract on a demise of real estate that it shall be fit for the purposes for which it was let. Consequently an abandonment of the premises under these circumstances forms no defense to an action for rent, and in all cases where a tenant has been allowed, upon suggestions of this kind, to withdraw from the tenancy and refuse the payment of rent, there will be found to have been a fraudulent misrepresentation or concealment as to the state of the premises which were the subject of the letting or else the premises proved to be uninhabitable by some wrongful act or default of the landlord himself. The lessor is not, however, always bound to disclose the state of the premises

Page 147 U. S. 424

to the intended lessee unless he knows that the house is really unfit for habitation and that the lessee does not know it and is influenced by his belief of the soundness of the house in agreeing to take it, for the conduct of the lessor may in this respect amount to a deceit practiced upon the lessee."

Taylor, Landlord and Tenant 382.

The principles applicable to the present case have been well stated in the recent case of *Bowe v. Hunking*, 135 Mass. 380. The syllabus states the case and decision as follows:

"A tenant cannot maintain an action against his landlord for an injury caused by falling upon a stair in the tenement the tread of which has been sawed out and left unsupported by a previous tenant, there having been full opportunity to examine the stair at the time of hiring, and no warranty of the fitness of the tenement having been given by the landlord, the only evidence of knowledge on the part of the landlord being that he knew the stair had been sawed out, that he tried it, and it bore his weight, and he thought it would bear anybody's weight."

The judge directed a verdict for defendants, and the supreme court sustained this ruling. Field, J., giving the opinion of the court, said (page 383):

"There is no implied warranty in the letting of an unfurnished house or tenement that it is reasonably fit for use [citing cases]. The tenant takes an estate in the premises hired, and persons who occupy by his permission, or as members of his family, cannot be considered as occupying by the invitation of the landlord so as to create a greater liability on the part of the landlord to them than to the tenant. The tenant is in possession, and he determines who shall occupy or enter his premises [citing cases]."

"In the case at bar, there was no express or implied warranty, and no actual fraud or misrepresentation. If the action can be maintained, it must be on the ground that it was the duty of the defendants to inform the tenant of the defect in the

Page 147 U. S. 425

staircase. This duty, if it exists, does not arise from the contract between the parties, but from the relation between them, and is imposed by law. If such a duty is imposed by law, it would seem that there is no distinction as a ground of liability between an intentional and an unintentional neglect to perform it, but in such a case as this is, there can be no such duty without knowledge of the defect. There is no evidence of any such knowledge except on the part of C. D. Hunking, and

the other defendants cannot, in any event, be held liable unless his knowledge can be imputed to them as the knowledge of their agent in letting the premises. The evidence is insufficient to warrant the jury in finding that C. D. Hunking intentionally concealed the defect from the tenant, and the action, if it can be maintained, must proceed upon the ground of neglect to perform a duty which the law imposed upon the defendants."

"A tenant is a purchaser of an estate in the land or building hired, and *Keates v. Earl of Cadogan*, 10 C.B. 591, states the general rule that no action lies by a tenant against a landlord on account of the condition of the premises hired in the absence of an express warranty or of active deceit. See also *Robbins v. Jones*, 15 C.B. (N.S.) 240. This is a general rule of *caveat emptor*. In the absence of any warranty, express or implied, the buyer takes the risk of quality upon himself. *Hight v. Bacon*, 126 Mass. 10; *Ward v. Hobbs*, 3 Q.B.D. 150; *Howard v. Emerson*, 110 Mass. 320. This rule does not apply to cases of fraud."

This rule of *caveat emptor* has been applied also in many other cases, some of which we now refer to.

*Keates v. Cadogan*, above cited, was an action on the case. The declaration stated in substance that the defendant knew that the house was in such a ruinous and dangerous state as to be dangerous to enter, occupy, or dwell in, and was likely to fall, and thereby do damage to persons and property therein; that the plaintiff was without any knowledge, notice, or information whatever that the said house was in said state or condition; that the defendant let the house to plaintiff without giving plaintiff any notice of the condition of the house; and

Page 147 U. S. 426

that plaintiff entered, and his wife and goods and business were injured. Defendant demurred to the declaration, and the court unanimously sustained the demurrer. Jervis, C.J., giving the opinion, said:

"It is not contended that there was any warranty that the house was fit for immediate occupation, but it is said that because the defendant knows it is in a

ruinous state, and does nothing to inform the plaintiff of that fact, therefore the action is maintainable. It is consistent with the state of things disclosed in the declaration that, the defendant knowing the state of things, the plaintiff may have come to him and said, 'Will you lease that house to me?' and the defendant may have answered, 'Yes, I will.' It is not contended by the plaintiff that any misrepresentation was made, nor is it alleged that the plaintiff was acting on the impression produced by the conduct of the defendant as to the State of the house, or that he was not to make investigations before he began to reside in it. I think, therefore, that the defendant is entitled to our judgment, there being no obligation on the defendant to say anything about the State of the house, and no allegation of deceit. It is an ordinary case of letting."

The rule of *caveat emptor* was also applied in the recent case of *Woods v. Naumkeag Steam Cotton Co.*, 134 Mass. 357. Defendant was owner of a tenement house fitted for four families, and plaintiff was tenant at will or wife of tenant at will. There were three stone steps leading down from the yard to the street on which ice and snow had accumulated, and on which plaintiff slipped and received the injury complained of. There was evidence tending to prove that at the time plaintiff was injured, she was in the exercise of due care. The jury viewed the premises. Plaintiff contended that the steps were of such material, and constructed in such manner, that they occasioned the accumulation of snow and ice thereon improperly, and that the defendant's omission to place a rail on either side or to take other reasonable measures to prevent one from falling was such negligence as would render the defendant liable; but the trial court held there was no evidence to go to the jury, and directed a verdict for defendant, and the supreme court sustained this ruling. Field, J., giving the opinion, says (p. 359):

"There may be cases in which the landlord is liable to the tenant for injuries received from secret defects which are

Page 147 U. S. 427

known to the landlord and are concealed from the tenant, but this case discloses no such defects in the steps. . . . [Page 361.] The ice and snow were the

proximate cause of the injury."

"The exceptions state that no railing had ever been placed on either side of the steps, that the jury viewed the premises, and that it was contended 'that the steps were of such material, and constructed in such manner, that they occasioned the accumulation of ice and snow thereon improperly.' The steps were of rough-split, unhewn granite, and the 'structure of the steps remained unchanged from the time of the plaintiff's first occupancy of the tenement to the time she received her injury.' The defendant was under no obligation to change the original construction of the steps for the benefit of the tenant."

*Hazlett v. Powell*, 30 Penn.St. 293, was an action of replevin in which an apportionment of rent was claimed by the tenant of an hotel on the ground that he had been partially evicted by the act of an adjoining owner in building so that the tenant's light and air from one side of his hotel were shut off or obstructed and, as a result, that the hotel was rendered *pro tanto* unfit for the purpose for which it was intended to be used. There was an offer to prove certain facts (p. 294), which the court states as follows (p. 297):

"But the rejected proposition also contained an offer to prove that the lessor knew at the time of executing the lease that the adjoining owner intended building on his lot -- at what time is not offered to be shown -- and did not communicate this information to the lessees. We think he was not bound to do so and that, if the evidence had been received, it would have furnished no evidence of fraud on the part of the lessor or become the foundation in equity for relief of the lessees. The substance of the complaint regarded something that the lessor was no more presumed to know than the lessees. It was nothing which concerned the title of the lessor, or the title he was about to pass to the lessees. It was a collateral fact, something only within the knowledge and determination of a stranger to both parties, and if material to either, I can see no obligation resting on either side of furnish

to the other the information. It was not alleged that the lessor made any representations on the subject or that there was any concealment of the information, or that any relation of trust and confidence existed between the parties, or that the lessees were misled by his silence and entered into the contract under the belief that the vacant lot would not be occupied, or that they were in a position in which they could not by diligence have ascertained the fact for themselves, and that they were not legally bound to take notice of the probability that the ground would be occupied by buildings, and inquire for themselves. These were elements to be shown to constitute fraud, and make the testimony available."

"The general rule both in law and equity,' says Story on Contracts 516,"

"in respect to concealment is that mere silence in regard to a material fact which there is no legal obligation to disclose will not avoid a contract, although it operates as an injury to the party from whom it is concealed."

"But the relation, generally, which raises the legal obligation to disclose facts known by one party to the other, is where there is some especial trust and confidence reposed, such as where the contracting party is at a distance from the object of negotiation, when he necessarily relies on full disclosure, or where, being present, the buyer put the seller on good faith by agreeing to deal only on his representations. In all these and kindred cases, there must be no false representations nor purposed concealments; all must be truly stated and fully disclosed. 'The vendor and vendee,' says Atkinson on Marketable Titles, 134,"

"in the absence of special circumstances, are to be considered as acting at arm's length. When the means of information as to the facts and circumstances affecting the value of the subject of sale are equally accessible to both parties, and neither of them does anything to impose on the other, the disclosure of any superior knowledge which one party may have over the other is not requisite to the validity of the contract."

" *Id.* Illustrative of this is the celebrated case of [Laidlaw v. Organ](#), 2 Wheat. 178. The parties had been negotiating for the purchase of a quantity of tobacco. The buyer got private information of the conclusion of peace with Great Britain, and called very early

Page 147 U. S. 429

in the morning following the receipt of it on the holders of the tobacco, and, ascertaining that they had received no intelligence of peace, purchased it at a great profit. The contract was contested for fraud and concealment. Chief Justice Marshall delivered the opinion of the Court to the effect that the buyer was not bound to communicate intelligence of extrinsic circumstances which might influence the price, though it were exclusively in his possession. And Chief Justice Gibson, in *Kintzing v. McElrath*, 5 Penn.St. 467, in commenting on this decision, says:"

"It would be difficult to circumscribe the contrary doctrine within proper limits where the means of intelligence are equally accessible to both parties."

" See also *Hershey v. Keembortz*, 6 Penn.St. 129. When the information is derived from strangers to the parties negotiating, and not affecting the quality or title of the thing negotiated for, it is not such as the opposite party can call for. We see no error in the rejection of the evidence on account of this part of the proposition, as there was no moral or legal obligation for the lessor to disclose any information he had on the subject of the intended improvement of the adjoining lot. It was not in the line of his title. It was derived from a stranger; it might be true or false, and the lessees could have got it by inquiry, as well as the lessor."

"It is well settled that there is no implied warranty that the premises are fit for the purposes for which they are rented [citing authorities], nor that they shall continue so, if there be no default on the part of the landlord."

In the recent case of *Viterbo v. Friedlander*, [120 U. S. 712](#) , MR. JUSTICE GRAY, who delivered the opinion of the Court, said, in contrasting the doctrines of the common and civil law:

"By that law [the common law, unlike the civil law], the lessor is under no implied covenant to repair, or even that the premises shall be fit for the purpose for which they are leased."

The plaintiff's evidence failed wholly to show that there was any special and secret danger from snowslides which was known only to the railway company, and which could not have been ascertained by the plaintiff. It was indeed alleged

Page 147 U. S. 430

that "the sectionhouse was in a place of danger from snowslides," but this was plainly the danger that impended over any house placed, as this one necessarily was, on a mountainside in a country subject to heavy falls of snow. The danger referred to was that incident to the region and the climate, and, in the eye of the law, as well known to the plaintiff as to the defendant.

On a careful reading of the plaintiff's evidence, we are unable to see that the jury could have been permitted to find any positive act of negligence on the part of the railroad company or any omission by it to disclose to the plaintiff any fact which it was the company's duty to disclose.

If, then, the plaintiff's case, as it appeared in her evidence, would not have justified a verdict on the ground of negligence or a fraudulent suppression of facts, and as the determination of the nature of the relation between the parties as that of landlord and tenant was clearly the function of the court, there would, in our opinion, have been no error if the court had really given a peremptory instruction to the jury to find for the defendant.

However, the record discloses that the court permitted the cases to go to the jury. It is true that the remarks made by the judge must have indicated to the jury that his own view was against the plaintiff's right to recover, but it has often been held by this Court that it is not a reversible error in the judge to express his own opinion of the facts if the rules of law are correctly laid down and if the jury are given to understand that they are not bound by such opinion. *Baltimore & Potomac Railroad v. Fifth Baptist Church*, [137 U. S. 568](#) ; *Simmons v. United States*, [142](#)

[U. S. 148](#) .

It is not necessary for us to review in detail the criticisms made in the several instructions, for, as we have seen, even if such instructions had amounted in a legal effect to a direction to find for the defendant, no error would have been committed.

It is obvious that these views of the case of Marcella Doyle, claiming for her personal injuries, are equally applicable to her suit under the statute, for the loss of her children. The

Page 147 U. S. 431

latter must be regarded as having entered under their mother's title, and not by reason of any invitation, express or implied, from the railway company, and hence they assumed a like risk, and are entitled to no other legal measure of redress.

No error being disclosed by these records, the judgment of the court below is in each case

*Affirmed.*

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