**Kohn Vs. Mcnulta**

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**SooperKanoon Citation** : sooperkanoon.com/87409

**Court** : US Supreme Court

**Decided On :** Jan-18-1893

**Appeal No.** : 147 U.S. 238

**Appellant** : Kohn

**Respondent** : Mcnulta

**Judgement** :

Kohn v. McNulta - 147 U.S. 238 (1893)
U.S. Supreme Court Kohn v. McNulta, 147 U.S. 238 (1893)

**Kohn v. McNulta**

**No. 105**

**Submitted January 4, 1893**

**Decided January 18, 1893**

**147 U.S. 238**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE NORTHERN DISTRICT OF OHIO*

## SYLLABUS

The verdict of a jury upon an issue submitted to it by order of a court of chancery is advisory only, and is binding upon the court only so far as it chooses to adopt it.

A servant of a railroad company, employed in coupling freight cars together, who is well acquainted with the structure of the freight cars of his employer and also with those of other companies sending freight cars over his employer's road differing from his employer's cars in structure and in the risk run in coupling them, assumes, by entering upon the service, all ordinary risks run from coupling all such cars.

On April 29, 1887, appellant entered into the employ of the defendant, the receiver of the Wabash, St. Louis & Pacific Railway Company, as a switchman in the yards of the company at Toledo, Ohio. He continued in such employ until the 11th of July, 1887, on which day, in attempting to couple two

Page 147 U. S. 239

freight cars, his arm was caught between the deadwoods and crushed. Thereafter he filed his petition of intervention in the Circuit Court of the United States for the Northern District of Ohio, the court which had appointed McNulta receiver, and in which the foreclosure proceedings were still pending. At first his intervening petition was referred to a master, but afterwards, on his motion, the order of reference was set aside and a jury called and impaneled. The testimony having all been received, the court left to the jury the single question of the amount of damages which the intervener should recover, if entitled to recover anything, and the jury in response thereto found that his damages were $10,000. The court, however, on an examination of the testimony, held that no cause of action was made out against the receiver, set aside the verdict of the jury, and dismissed the petition, from which decision the intervener brought his appeal to this Court.

Page 147 U. S. 240

MR. JUSTICE BREWER, after stating the facts in the foregoing language, delivered the opinion of the Court.

So far as the mere matter of procedure is concerned, there was obviously no error. The intervention was a proceeding in a court of equity, and that court may direct a verdict by a jury upon any single fact, or upon all the matters in dispute. But such verdict is not binding upon the judgment of the court; it is advisory simply, and the court may disregard it entirely or adopt it either partially or *in toto.* *Barton v. Barbour,* 104 U. S. 126 ; 2 Daniell's Chancery Pl. and Pr., 5 ed. 1148, and cases cited in note. *Idaho & Oregon Land Improvement Co. v. Bradbury,* 132 U. S. 509 , 132 U. S. 516 , and cases cited.

With respect to the merits of the case, the decision of the court was also clearly correct. The intervener was twenty-six years of age. He had been working as a blacksmith for about six years before entering into the employ of the defendant. He had been engaged in this work of coupling cars in the company's yard for over two months before the accident, and was

Page 147 U. S. 241

therefore familiar with the tracks and condition of the yard, and not inexperienced in the business. He claims that the Wabash freight cars, which constituted by far the larger number of cars which passed through that yard, had none of those deadwoods or bumpers; but inasmuch as he had in fact seen and coupled cars like the ones that caused the accident, and that more than once, and as the deadwoods were obvious to anyone attempting to make the coupling, and the danger from them apparent, it must he held that it was one of the risks which he assumed in entering upon the service. A railroad company is guilty of no negligence in receiving into its yards, and passing over its line cars, freight or passenger, different from those it itself owns and uses. *Baldwin v. Railroad Co.,* 50 Ia. 680; *Indianapolis & Bloomington Railroad v. Flanigan,* 77 Ill. 365; *Michigan Central Railroad v. Smithson,* 45 Mich. 212; *Hathaway v. Michigan Central Railroad,* 51 Mich. 253; *Thomas v. Missouri Pacific Railway,* 18 S.W. 980.

It is not pretended that these cars were out of repair or in a defective condition, but simply that they were constructed differently from the Wabash cars, in that they had double deadwoods or bumpers of unusual length to protect the drawbars. But all this was obvious to even a passing glance, and the risk which there was in coupling such cars was apparent. It required no special skill or knowledge to detect it. The intervener was no boy placed by the employer in a position of undisclosed danger, but a mature man doing the ordinary work which he had engaged to do, and whose risks in this respect were obvious to anyone. Under those circumstances, he assumed the risk of such an accident as this, and no negligence can be imputed to the employer. *Tuttle v. Detroit, Grand Haven &c.; Railway,* 122 U. S. 189 ; *Ladd v. New Bedrord Railroad,* 119 Mass. 412.

The decision of the circuit court was right, and it is

*Affirmed.*