

on his payment and release, leaving the third what shall remain? This is a sad jumble of interfering rights, growing out of continuing liability. But it is said the recorder may take up his certificate on payment. But this will not always protect the subsequent purchase, which may have taken place before the discovery of the secret deed or mortgage so that the right of action has vested, if vest it can. A continuing liability beginning like a snowball, increases like an avalanche overwhelming and destroying the unfortunate incumbent of office. Now while he must bring fidelity and diligence to the execution of his duties, the law owes him protection against needless severity and hardship. It is much less hardship to require a new search for every purchaser than to entail upon officers, the accumulated burthens of independent transactions, and adventitious advance of the prices of real estate.

If instead of continuing liability, we proceed upon the ground of successive liability to each new purchaser, the case runs counter to the objections before stated. The officer owes but one duty which is to him who employs and pays him. If a new liability arise, it is because of a new duty which cannot take place without renewed privity and renewed compensation. It encounters a further objection. The new duty at each successive purchase, gives rise to a new cause of action, which runs only from its breach, and cannot occur till the new purchase is made. This may be twenty years after the date of the certificate. But this is repugnant to the statute of limitations which bars actions against sureties in official bonds after seven years from the injury, and that must arise during the official term.

It cannot be the case that a right of action follows the floating certificate down the stream of title, because there is no adequate compensation for this tremendous risk, there is no privity of duty between the officer and those coming after the person procuring the search, there is a compounding of several injuries, where but one can naturally exist, and because it is clearly harsh, unjust and impolitic.

If any one will have, in addition to the satisfactory evidence which the certificate affords, the personal responsibility of the officer, let him ask for it and pay for it by obtaining a new search. There is good reason for this, a new search may reveal the before undiscovered incubus upon the title, freeing the officer from further liability, and applicant from injury and litigation. Give the officer a locus, and the citizen the means of escape from undesired difficulty.

There is an objection not contained in the grounds of demurrer fatal to this action, if the condition of the bond be correctly set out in the declaration. The only condition recited is to "deliver up the records and other writings belonging to the said office, whole, safe and undefaced to his successor therein, according to law." This covers only the public interest but provides for no protection against private injury. The liability of the sureties is strictly legal, and cannot be extended beyond the terms of the condition.

Judgment for the defendant on the demurrer.

DERBY V. LOWRY.

A conductor of a passenger car has no right to eject a passenger on account of color or race. No regulation of the company will justify such a proceeding, or protect him from liability in damages.

Mrs. Derry, a very respectable woman, almost white, alleged that she got into a passenger car, on the Lombard and South street line, about 11 o'clock at night, being then on her way home from a church, where, with others of her race, she had been engaged in providing comforts for the wounded soldiers. After she had been seated for a few minutes, the conductor came in and told her she must get out; that no niggers were allowed to ride on that line. Mrs. Derry pleaded the lateness of the hour; that there were only two or three passengers in the car, none of whom had objected, and finally asserted her right to remain. The conductor, thereupon, called in the aid of two friends standing upon a street corner, took off his coat, seized hold of her, struck, kicked, and finally ejected her from the car with great violence, tearing her clothes and inflicting some personal injuries. On the part of defendant it was alleged that there was a rule established by the superintendent of the road, known to and approved of by the directors, that all colored people were to be excluded from the cars; that in obedience to this rule the defendant had ordered Mrs. Derry to leave, and only used force when rendered necessary by her resistance. It appeared, however, from the testimony of officer Somers that the defendant admitted that he did kick "the Nigger."

Earle and White, counsel for plaintiff, contended that the company were common carriers and had no right to exclude from their cars any person, otherwise unobjectionable, because of their race or complexion.

ALLISON, J., then charged the jury as follows:

The important question involved in this action is the right claimed by conductors of city passenger railways to refuse passage to persons of color, and to eject such persons from the cars of which they have charge, when entrance to the same is obtained without their knowledge or consent.

In most instances the conductor in charge of the car shields himself under an alleged regulation of the company of which he is an employee or agent. This is the case here, although in fact there was no such regulation of the Lombard and South street Passenger Railroad; the attempt to set up the existence of such a rule, enacted by the directors of the company, utterly failed; but for the purposes of the case now under trial, I instruct you, as a principle of law, that the existence of such a by-law or resolution of the company, would not avail the defendant as a justification for the wrong complained of in the plaintiff's declaration. It would be proper to allow proof of the existence of such a regulation, to be given to the jury in mitigation of damages, to show that defendant did not, of his own motion, with wicked and malicious intention, inflict personal violence upon the plaintiff; but that he was acting under the instruction of the company, whose errand he was, in ejecting her from the car.

The principles of law which govern city passenger railway companies, in no respect that I am aware of, differ from those applicable to