

If, in face of this warning, Pesha chose to take his chances, the action must fail—an invitation to alight may be countermanded, but to be effectual it must be shewn that it was given in such a way as to be in fact communicated to the passenger.

There was some serious doubt as to the giving of this warning in the full form stated by this witness.

When this warning was supposed to have been given, Pesha was standing at the door of the car, and the conductor was 6 feet away and on the bottom step. Pesha had the collar of his fur coat up, for the day was cold.

The trainman gave no warning.

The train was a short one, and the conductor and trainman could have easily done all necessary to protect the passengers. The danger from the passing train was known to them—it was easily seen from the platform—and the peril of the passengers who were to alight at the station was great if they did not wait till the train passed. When the invitation to alight had been given, the conductor and his assistants ought to have done more than they did, and should have seen that the passengers were made aware of the peril from the passing train, and that it was not enough to tell this old man unless it was seen that he heard and understood.

If it was intended to back out and draw up at the platform, why was baggage taken off and put on before the train drew up?

The learned Judge made it plain that he was not laying down any rule of law, but making a finding of fact that the death of Pesha was due to the negligence of the defendants' servants in failing to give any effective countermand to the invitation to alight, or effectively to warn him of his peril from the passing train, as they ought to have done when, after the calling of the name of the station, the train drew up opposite the station, in a place where it was reasonable for passengers to suppose they were expected to alight.

The amount of damages was not an easy matter. Viewing all the circumstances, they should be assessed at \$500.