

## SIOUX CITY &amp; P. R. CO. v. STOUT

## UNITED STATES SUPREME COURT

84 U.S. 657 (1873)

ERROR to the Circuit Court for the District of Nebraska.

Henry Stout, a child six years of age and living with his parents, sued, by his next friend, the Sioux City and Pacific Railroad Company, in the court below, to recover damages for an injury sustained upon a turntable belonging to the said company. The turntable was in an open space, about eighty rods from the company's depot, in a hamlet or settlement of one hundred to one hundred and fifty persons.... The child, without the knowledge of his parents, set off with two other boys, the one nine and the other ten years of age, to go to the depot, with no definite purpose in view. When the boys arrived there, it was proposed by some of them to go to the turntable to play. The turntable was not attended or guarded by any servant of the company, was not fastened or locked, and revolved easily on its axis. Two of the boys began to turn it, and in attempting to get upon it, the foot of the child (he being at the time upon the railroad track) was caught between the end of the rail on the turntable as it was revolving, and the end of the iron rail on the main track of the road, and was crushed.

The table was constructed on the railroad company's own land, and, the testimony tended to show, in the ordinary way. It was a skeleton turntable, that is to say, it was not planked between the rails, though it had one or two loose boards upon the ties. There was an iron latch fastened to it which turned on a hinge, and, when in order, dropped into an

iron socket on the track, and held the table in position while using. The catch of this latch was broken at the time of the accident. The latch, which weighed eight or ten pounds, could be easily lifted out of the catch and thrown back on the table, and the table was allowed to be moved about. This latch was not locked, or in any way fastened down before it was broken, and all the testimony on that subject tended to show that it was not usual for railroad companies to lock or guard turntables, but that it was usual to have a latch with a catch, or a draw-bolt, to keep them in position when used.

The record stated that ‘the counsel for the defendant disclaimed resting their defence on the ground that the plaintiff’s parents were negligent, or that the plaintiff (considering his tender age) was negligent, but rested their defence on the ground that the company was not negligent, and asserted that the injury to the plaintiff was accidental or brought upon himself....’

The jury found a verdict of \$7500 for the plaintiff, from the judgment upon which this writ of error was brought.

Mr. Isaac Cook, for the plaintiff in error, insisted--

1st. That the party injured was himself in fault, that his own negligence produced the result, and that upon well-settled principles, a party thus situated is not entitled to recover.

2d. That there was no negligence proved on the part of the defendant in the condition or management of the table.

Mr. Justice HUNT delivered the opinion of the court.

1st. It is well settled that the conduct of an infant of tender years is not to be judged by the same rule which governs that of an adult. While it is the general rule in regard to an adult, that to entitle him to recover damages for an injury resulting from the fault or negligence of another, he must himself have been free from fault, such is not the rule in regard to an infant of tender years. The care and caution required of a child is according to his maturity and capacity only, and this is to be determined in each case by the circumstances of that case.

But it is not necessary to pursue this subject. The record expressly states that ‘the counsel for the defendant disclaim resting their defence on the ground that the plaintiff’s parents were negligent, or that the plaintiff (considering his tender age) was negligent, but rest their defence on the ground that the company was not negligent, and claim that the injury to the plaintiff was accidental or brought upon himself....’

2d. Was there negligence on the part of the railway company in the management or condition of its turntable?

That the turntable was a dangerous machine, which would be likely to cause injury to children who resorted to it, might fairly be inferred from the injury which actually occurred to the plaintiff. There was the same liability to injury to him, and no greater, that existed with reference to all children. When the jury learned from the evidence that he had suffered a serious injury, by his foot being caught between the fixed

rail of the road-bed and the turning rail of the table they were justified in believing that there was a probability of the occurrence of such accidents.

So, in looking at the remoteness of the machine from inhabited dwellings, when it was proved to the jury that several boys from the hamlet were at play there on this occasion, and that they had been at play upon the turntable on other occasions, and within the observation and to the knowledge of the employees of the defendant, the jury were justified in believing that children would probably resort to it, and that the defendant should have anticipated that such would be the case.

As it was in fact, on this occasion, so it was to be expected that the amusement of the boys would have been found in turning this table while they were on it or about it. This could certainly have been prevented by locking the turntable when not in use by the company. It was not shown that this would cause any considerable expense or inconvenience to the defendant. It could probably have been prevented by the repair of the broken latch. This was a heavy catch which, by dropping into a socket, prevented the revolution of the table. There had been one on this table weighing some eight or ten pounds, but it had been broken off and had not been replaced. It was proved to have been usual with railroad companies to have upon their turntables a latch or bolt, or some similar instrument. The jury may well have believed that if the defendant had incurred the trifling expense of replacing this latch, and had taken the slight trouble of putting it in its place, these very small boys would not have taken the pains to lift it out, and thus the whole difficulty have been avoided. Thus reasoning, the jury would have reached the conclusion that the defendant had omitted the care and attention it ought to have given,

that it was negligent, and that its negligence caused the injury to the plaintiff. The evidence is not strong and the negligence is slight, but we are not able to say that there is not evidence sufficient to justify the verdict. We are not called upon to weigh, to measure, to balance the evidence, or to ascertain how we should have decided if acting as jurors. The charge was in all respects sound and judicious, and there being sufficient evidence to justify the finding, we are not authorized to disturb it....

It has been already shown that the facts proved justified the jury in finding that the defendant was guilty of negligence, and we are of the opinion that it was properly left to the jury to determine that point.

Upon the whole case, the judgment must be

**AFFIRMED.**