HOMELY ADVICE.—BEING A BRIEF DISCUSSION OF HOW TO RIDE IN A RAILWAY TRAIN.

By Chester N. Farr, Jr.

We offer no excuse for the writing of this article. Had the intricacies of railroad accident law been developed to their present extent at the time Poor Richard wrote his almanac, he would have infallibly produced a chapter somewhat similar to this of ours. We intend ultimately to publish it as a "Handbuch" for tourists, so that it may become a familiar and indispensible accompaniment of a traveler's kit. The world has long stood in need of an article of this character, and it is with a feeling of pardonable pride that we offer this one to the world aforesaid.

The advantages of the article are obvious. You, for example, reader, meet with what is popularly called an accident on a railway train. You are injured, your business falls in arrears, your physician becomes a too frequent visitor, you are boiling with indignation against the company. You sue for damages and indulge the pleasing expectancy of just retribution. But, my dear friend, you have failed to recognize that there is, in the eye of the law, a monstrosity known as "the ordinary man, exercising reasonable care, under the circumstances." You have failed to conduct yourself with that prudent nicety which this gentleman would have exercised under like conditions. You are nonsuited or a verdict is directed against you. Had you but read this article you might have recovered substantial damages to pay for your business neglected, your body permanently injured and your physician's bills. It is the high function of this essay to inform you as to what you should do when you ride on a railway train.

Imprimis: Let us see how one should board a train. But eh? Is it possible that you are sneering, reader? And what

is that you say? Any ass can do that? Now, faith, this is a display of the most cardinal lack of information on your part. *Crassa Ignorantia*, we may call it, and "ignorance of the law," according to a maxim somewhat well thumbed in legal fingers, and a trifle out at the elbows, "excuseth no one." For, in sooth, there is no more complicated problem in all human action than this same conduct of one's self in boarding a railroad train, unless, perchance, it be alighting from the same.

This is such a progressive country that loafing habits of any description whatsoever are intolerable. Most individuals are presumed to know how to conduct themselves in a railway station within the limits of becoming decency—but in the eyes of the law—in its eyes, beware reader, lest you loiter in the ticket office to speak to a friend after having purchased your ticket: *R. R. Co.* v. *Fox*, 6 S. W. Rep 569. For you must pass quickly to the platform, keeping a sharp lookout for mail bag piles, and so on, which the care of the company may have placed in your path: *Ayres* v. *R. R. Co.*, 77 Hun. 414. Perhaps these may be negligently placed, but that is not for you to determine. Having reached a small station at an unseasonable night hour to wait for a train, take good care to seek a spot of safety and remain there: *Grimes* v. *R. R. Co.*, 36 Fed. Rep. 72. Are you cold and need exercise? The court has been pleased to permit this, but be most cautious in its conduct; the passage between Scylla and Charybdis or the Valley of the Shadow of Death is not more difficult. Call loudly for "light," even though you know the station agent is slumbering peacefully several parasangs in the distance: *Wood* v. *R. R. Co.*, 13 So. Rep. 555. For once, having called so loudly, you may walk gracefully into any obstruction you choose in the darkness, and recover handsome damages for injuries consequent thereon.

Take especial pains to regulate your conduct with propriety as another train draws into the station. Do not stand on the planking between the tracks, no matter how alluringly convenient it may seem: *McGeehan* v. *R. R. Co.*, 149 Pa. 188.) When standing on a narrow space in front of a raised bag-

gage platform remain perfectly calm and flat as a train moves rapidly by you. It usually gives you a margin of at least six inches. You may think the margin a minus quantity, but should you attempt to gain any special "coin of vantage" and be struck while so doing, only the railroad company will forgive you: *Matthews* v. *R. R. Co.*, 148 Pa. 491.

The railroad company is not responsible for the subsequent career of mutilated bodies thrown indiscriminately around by the action of the train. Practice in rapid dodging is considered an exercise of reasonable care, and when Mr. Wood, a respected citizen of Philadelphia, was struck by a flying corpse while standing on a station platform, the courts declined to consider his case: *Wood* v. *Pa. R. R. Co.*, 4 Dist. Rep. 119.

On entering a car rush instantly for a seat, do not stand leisurely looking to see which pretty girl you are going to seat yourself beside. This is not a time for the inspection of female loveliness. Take a seat, *p. d. q.*, (N. B. This is not verbatim from the opinion): *De Soucey* v. *R. R. Co.*, 15 N. Y. S. 108. The courts are graciously pleased to permit a passenger to sit next the stove on a cold day. If you are thrown into it by a sudden jerk of the train, as Mr. Stewart, of Texas, was, you may recover. This is gratifying: *R. R. Co.* v. *Stewart*, 1 Tex. Civ. App.

Pointing out scenery to an admiring friend while seated at a car window or endeavoring to pull down telegraph poles or station posts with your hand as they are passed, is not an exercise of due care: *Quinn* v. *R. R. Co.*, 7 S. E. Rep. 614. The platform of a car is not the proper place for a passenger: *Toney* v. *R. R. Co.*, 18 N. E. Rep. 213. The fact that you are going to a football match or prize fight and could not get in the car, even were you as thin as tissue paper, affords no excuse in the omniscience of the law: *Worthington* v. *R. R. Co.*, 64 Vt. 107; and, if, being a modest man, you have just offered your seat to a lady, and desire to conceal your blushes on the back platform, we are afraid that your only alternative is the toilet room. You may enjoy the society of the baggage agent, but it is negligence, *per se*, to talk to him: *R. R. Co.* v. *Langdon*, 92 Pa. 21. Nothing, not even a cinder

in your eye which only the baggage agent can extract, justifies your presence in the baggage car.

Riding on the cupola of a caboose car, though an exalted attitude, is not one of due care. Mr. Tuley, of Missouri, thought otherwise. He did not recover: *Tuley* v. *R. R. Co.*, 41 Mo. App. 432. Similarly a position on the coping of an engine tender or the sheet iron covering of the steps of an elevated railroad car, while they may afford unsurpassed opportunities for viewing scenery, are held to be objectionable actions by the courts: *Carroll* v. *R. R. Co.*, 17 S. W. Rep. 889; *R. R. Co.* v. *Riley*, 40 Ill. App. 416.

Do not, in your innocence, seat yourself on the arm of a car seat to converse with a friend. The railroad company is not responsible for your safety under such conditions. While this post offers excellent advantages for whispering soft nothings into the ears of Venus, the railroad company is not legally expected to afford facilities for love-making, and such action may be regarded as negligence, *per se*: *Wallace* v. *R. R. Co.*, 4 S. E. Rep. 503. As a matter of safety, it is probably better to rush swiftly to a seat, and plank yourself solidly upon it, for though courts have passed no opinion upon one who rides on the truck of a passenger car or the top of a locomotive smoke-stack, certain well-informed individuals have shrewdly inferred that they might regard proceedings of this nature, in the light of mild contributory negligence.

The law has a strong opposition to idle curiosity, and if the train by chance should stop, be thoroughly convinced in your own mind that the point of stoppage is a station ere you alight. A water tank or switch house will not suffice: *Wandell* v. *Corbin*, 1 N. Y. S. 795. Having once securely seated yourself, take good care if the car be insufficiently heated to complain loudly to the officials, for having done this you may resume your seat and welcome sore throat, malaria, bronchitis, pneumonia and consumption, with the pleasing assurance that the railroad company will be required to pay your doctor's bill and compensate you for physical suffering besides: *Hastings* v. *R. R. Co.*, 33 Fed. Rep. 858.

It is a charming sight to see a man step airily off a train which draws into the station, and rush to the fond embrace of a loving wife or expectant sweetheart, and as he does this no one imagines that he is performing a feat of the most complicated description, in comparison with which the problem of three bodies sinks into puerile insignificance? "Railroads are run for the public convenience." This was a rather injudicious statement made by a Massachusetts judge. Fortunately it was *obiter*, otherwise it might have revolutionized the law. Perhaps he meant to say "The public are run for the convenience of railroads."

There is a certain intricate action performed by railroad officials, known to the omniscence of the law as an "invitation to alight." Such invitation we may hint to the uninitiated is not couched in terms such as "The Northern Pacific Railroad Company present its compliments to J. S. and will be pleased to dispense with the pleasure of his company at Walla Walla Station." No, indeed. An individual pokes his head in at the door and calls out, "Xyzhirtlmxpq." It then becomes your duty to conduct yourself in the following manner: Think carefully of the important proposition of law, to wit: That passengers are expected to know that trains stop at places other than stations. Some have been known to stop temporarily in a cut, but under such circumstances it is negligence *per se*, for you to alight, even though sunk in absence of mind, and endeavor to scale the embankment: *Smith* v. *R. R. Co.*, 88 Ala. 538. You must realize the fact that two announcements are some times made of a station, one before and one upon arrival. If in doubt on this dubious point, it is your duty to inform yourself of your whereabouts: *Minock* v. *R. R. Co.*, 56 N. W. Rep. 780. Having satisfactorily turned over these points in your mind, do not fail, under all circumstances, to be thoroughly convinced that the individual, who so hastily thrust his head in at the door, called out an indistinguishable name, and as hastily withdrew his countenance from your view,—do not fail, we repeat, to convince yourself, that this individual is an officer of the road, and one in authority. This may, to be sure, necessitate your walking

through several sections of the train, and making proper inquiries on the route, but if it should so happen that the voice in question emanated from a throat less august than that of a railroad official, it does not constitute, in the eye of the law, an invitation, and you may be negligent in alighting: *R. R. Co.* v. *Farrell*, 31 Ind. 408.

The mental process necessitated by these acts is a trifle involved, but the company, so runs the law, must perforce permit every passenger a reasonable length of time in which to alight. But what is a reasonable length of time do not attempt to determine. That is the province of the jury.

We will suppose your intellect acts very rapidly—that you have inspected the surroundings—that you have thoroughly grasped the legal principles which we have presented you—that you have pursued the person who called the station, through the train, and have discovered him to be the conductor; and now finally, you reach the platform, panting with your physical and mental exertions, and just as you are stepping off, in full view of an official, the train starts to move. Ah! happy, thrice happy man, are you hurt under these conditions. For, observes the sapient law, it is negligence on the company's part to start the train when one is plainly perceived in the act of alighting, even though such persons may have waited an unreasonable length of time. "For a human being," said a Texas judge, in a temporary ebullition of christian charity, "does not forfeit the right to live on account of being negligent." This is refreshing: *R. R. Co.* v. *Weisen*, 65 Tex. 443.

Having fully satisfied yourself that the invitation is one meeting with all the requirements of the law, it is your duty to exercise ordinary care in alighting: *R. R. Co.* v. *Williams*, 7 S. W. Rep. 88. Perhaps you are under the impression that you know what ordinary care is. Here we beg leave to disabuse your mind. The train is expected to stop at a station a reasonable length of time, and conversely you are expected to occupy only a reasonable length of time in leaving it. Rush rapidly to the platform, and plunge down every step until you reach the last, then pause, for you have much to consider at

this particular point. Should you alight while the train is moving, even though it might not have stopped a reasonable length of time, you are guilty of negligence: *Cousins* v. *R. R. Co.*, 56 N. W. Rep. 14. If you are standing on the platform while the train is slowly moving into the station, and a sudden jerk precipitates you to the ground, you are negligent: *Secor* v. *R. R. Co.*, 10 Fed. Rep. 15.

In general, if the train be moving, be it ever so little, 'tis well not to alight. Do you see the transaction of important business slipping from your grasp, do you see home, friends, family, vanishing in the distance, do you realize an empty purse, and the next stop, midnight in a strange city, 100 miles away, under no circumstances may you so far forget yourself as to jump: *R. R. Co.* v. *Bangs*, 47 Mich. 470; *Johnson* v. *R. R. Co.*, 70 Penna. 357. You may have agreed with the conductor to stop at your particular place, and not impossibly you may have clinched the bargain by a slight pecuniary consideration, but that is no excuse, better the loss of money, friends, fortune, than the charge of negligence, *per se.*: *Barnett* v. *R. R. Co.*, 87 Ga. 766. You may imagine it an exceptional case when the train is derailed and is bumping over the ties, and that you might be permitted to jump under such terrifying conditions. Perhaps it is best to err on the safe side. This may or may not be negligence: *R. R. Co.* v. *Rohrman*, 13 W. N. C., 258. You had better take affairs easily, sit down, light a cigar. This is not negligence.

You are standing on the car steps, the train is moving slowly out, and has not stopped. The conductor, addressing you in that polite, engaging manner that distinguishes American railroad officials, orders you to jump. Now here is a difficult problem. If the attempt be manifestly dangerous, you must resist the polished insinuations of the conductor, and remain on the car. Since the determination of what is "manifestly dangerous" necessitates the injecting of yourself into the minds of a modern jury, an intellectual feat before which Sir Isaac Newton might well quail, possibly it were better if you swallowed the large lump in your throat, and, banishing

the pleasures of a cosy fire, a fascinating book or a steaming supper from your recollection, returned to the car: *Riebel* v. *R. R. Co.*, 17 N. E. Rep. 107. If, however, you are pulled violently to the ground by a gentlemanly official, while standing upon the steps of a slowly moving train, you are privileged to recover damages: *R. R. Co.* v. *Wood*, 14 N. E. Rep. 572. N. B.—We are charmed to record this oasis in a desert of negligence.

Suppose the train has stopped. You reach the last step of the platform and prepare to alight. The step is too high from the ground, then call loudly for assistance. Though perhaps you may be confronted by another rule of law which says that the conductor is not required to assist a passenger to alight: *Raben* v. *R. R. Co.*, 35 N. W. Rep. 645; but this only applies to ordinary circumstances. Never attempt to determine what ordinary circumstances are, but having bellowed persistently for assistance, return quietly to the car, and resume your seat with a patient resignation that affords a strong contrast to the conduct of Mrs. McDermott of Wisconsin, who insisted upon jumping, despite the height, and was seriously injured thereby: *McDermott* v. *R. R. Co.*, 52 N. W. Rep. 85. And, finally, one thing more, notice critically where you are about to step. A certain lady of Pennsylvania stepped upon the bung of a beer barrel which was lying on the station platform as she left the train, but she never got a cent of damages for the court thought this was too ordinary an obstruction: *Bemhardt* v. *R. R. Co.*, 159 Pa. 360. Just what would be such an extraordinary obstruction as to make the railroad company liable we are not prepared to say. Possibly, a package of nitro-glycerine or a pot of boiling pitch.

But you have avoided bungs, you have not ridden on the coping of the engine tender (see *supra*). You have not shilly-shallyed before mounting the train (see *supra*). You are home, you are safe.

Ah, little does Cecilia, Camilla, Evelina or Flabella think, as she clasps her loving Mortimer in her arms, of the way beset with dangers through which he has passed. Hug tighter, Cecilia, and though it be but a short ten miles of iron road that separ-

ates Mortimer from his office, think twice ere you determine to remain in the suburbs another year.

We have had serious hesitancy in sending the above to press. We are willing to confess that since reading up the subject of negligence on railroads our own existence has not been a supremely happy one. There is a consciousness of self, a feeling of helpless ignorance in a vast sea of essential knowledge that oppresses the spirit. Perhaps it is wrong to introduce like feelings into minds now blissfully unconscious of error; perhaps—but the point is too knotty. We will at least save men from riding on engine cowcatchers or dancing the bolero on top of a Pullman Palace car. Doubtless we have not làbored in vain.