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Carriers--Care Required to Discover Obstructions

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right to assume that his agent will act within the scope of his authority. *Johnson v. Ogren*, 102 Minn. 8, 112 N. W. 894; *Combs v. Scott*, 12 Allen (Mass.) 493; *Haswell v. Standing*, 152 Iowa 291, 132 N. W. 417. See *Mechem, Agency*, 2d Ed., 403. To raise the presumption in this case where there were no facts such as to place principal upon inquiry is to presume that the principal has done something which neither the law not the relation of the parties requires him to do, and hence is error. The court here could have safely rested its decision on the grounds that the principal was bound *ab initio* because the agent acted within the scope of his apparent authority and have invoked the rule that a principal cannot by secret limitations divest an agent of the authority that an agent in that capacity customarily has. *Rohrbough v. U. S. Express Co.*, 50 W. Va. 148, 40 S. E. 398; *Brown v. Franklin, etc.*, *Ins. Co.*, 165 Mass. 565, 43 N. E. 512. See *Mechem, Agency*, 2d Ed., 396, 730-734. —*W. B. H.*

**CARRIERS—Care Required to Discover Obstructions.**—Plaintiff while a passenger on the defendant’s car was injured by a derailment due to a stone falling on the right of way. Question is what is the amount of care which a common carrier must use to discover objects off the right of way which may become dislodged and fall on the tracks. *Held*, common carrier must use only reasonable and ordinary care. *Thomas v. Monongahela Valley Traction Co.*, 112 S. E. 228 (W. Va. 1922).

The common carrier must exercise the highest degree of care, prudence and foresight for the passengers’ safety. *Irvine v. Delaware, etc. R. Co.*, 184 Fed. 664; *Brogan v. Union Traction Co.*, 76 W. Va. 698, 86 S. E. 753. The reason for requiring such a degree of care has been because the safety of the passenger lies peculiarly within the control of the common carrier. See, 4 R. C. L. § 586. This applies to all things connected with the undertaking. *Birmingham Union Ry. Co. v. Hall*, 90 Ala. 8, 8 So. 142; *Palmer v. President, etc., Delaware and Canal Co.*, 120, N. Y. 170, 24 N. E. 302. See, 4 R. C. L. § 618. An earlier West Virginia case also upholds the doctrine, *Carrico v. West Virginia Cent. and P. Ry. Co.*, 39 W. Va. 86, 19 S. E. 571. A Texas case of practically the same facts as the principal case holds that if it was necessary to use a high degree of care to discover, and remove nearby objects which might obstruct the tracks, it was the common carrier’s duty to do so. *Texas and P. Ry. Co. v. Hughes*, Tex. Civ. App., 192 S. W.
1091. Practically the same doctrine is upheld in Rice v. Chicago B. & Q. Ry. Co., 153 Mo. App. 35, 131 S. W. 374. The case of Thomas v. Monongahela Traction Co., supra, holds that the company is required to use that ordinary degree of care which would be attributed to the ordinary man under similar circumstances because it would be requiring too much care to exact the highest degree of care of which human foresight is capable. Why should the highest degree of care be to much to require? The common carrier is still the only one capable of protecting its passengers. There would seem to be no good reason why the common carrier would not owe them the same protection from that danger as from any other.

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