



GEORGE MARTIN v. PENNSYLVANIA RAILROAD COMPANY

246 N.Y.S.2d 264 (1964) | Cited 0 times | New York Supreme Court | January 30, 1964

Judgment entered in plaintiff's favor unanimously reversed on the law, and in the exercise of discretion, and a new trial ordered, with costs to the appellant. In this action, brought under the Federal Employers' Liability Act, the burden of proving contributory negligence on the part of the plaintiff is upon the defendant (*Central Vt. Ry. v. White*, 238 U.S. 507). The trial court refused a request to charge as to the defendant's burden, stating that it had already so charged. A close examination of the charge indicates that no such instruction was given. The charge as given could have led the jury to believe that the burden rested upon the plaintiff. The rule of comparative negligence being applicable in this case, such erroneous belief on the part of the jury could have resulted in a verdict for a lesser amount than would have otherwise been found. In the circumstances, a new trial is required.

