In the Supreme Court.

WHAT IS CONTRIBUTORY NEGLIGENCE IN CROSSING A RAILROAD.

Central Railroad Co. of New Jersey vs. Mary Feller et al.—Error to the Common Pleas of Carbon county. This was an action for damages for the killing of Henry Feller, Sr., by a locomotive of the railroad company. The Central Railroad, as it runs through Weissport, southward, crossed with a single track at right angles a public road running east and west. The approach to the crossing by the public road on the west side was by ascending an incline of 100 feet long, with an elevation of 7½ degrees. To the north of the crossing in the direction of the railroad station, were a number of buildings and a large rolling mill. There was also on the side of the track itself a watchman's house placed there but a short time before the accident. On the morning of March 26th, 1874, Henry Feller a man 72 years of age, and partly deaf, came to Weissport. On his return home later in the day, he was about to go up the hill towards the crossing, when he was told by a friend to stop, as a train was coming. He paid no attention and drove on until he arrived within a few feet of the track, when he was seen standing in his wagon and lashing his mules. He was run over and killed.

This suit for damages was then brought, plaintiff setting out the facts above mentioned, and alleging that the accident was the result of the negligence of the defendants. They contended that Feller, as he ascended the hill, had his view cut off by the rolling mill, the rolling mill stack and the watch-house, and was unable by reason of these impediments to see the approaching train until he had reached the top of the ascent and stood directly in front of the track. They therefore claimed that the company was negligent in not keeping a watchman at so dangerous and frequented a crossing, in putting up its watch-house where it impeded the view, and in keeping its roadway at the crossing of the road in such a condition as to make the crossing a dangerous one at any time.

In answer to this, the railroad company claimed that they had been guilty of no negligence, as they had whistled and rung the bell as they approached the crossing, and had done everything that the law required of them. But, even admitting they had not done this, they contended there was no liability on them, inasmuch as the deceased had been guilty of contributory negligence per se, and hence could not recover. In support of this, they contended that the decedent, who was deaf, or partially so; who was familiar with the crossing; was driving a pair of manageable horses which he could have stopped anywhere on the ascent; who stopped at a few feet of the railroad crossing and then raced his mules across; who could have seen the train before he reached the watch-house, and who should have heard the whistle of the locomotive, which others all around him heard, was bound to have gotten out of his wagon and gone up to the head of his team and looked up and down the track before crossing. His failure to have done this, they asked the Court to instruct the jury by binding directions, was negligence per se, in which case there could be no recovery.

This the Court below refused to do, but left it as a question of fact for the jury to determine whether the decedent did all that a prudent and careful man would have done under the circumstances; whether, under all the circumstances of the case, a prudent, cautious man would have got out of his wagon and approached the track at the head of his mules, and whether, in view of the partial deafness of the decedent, such extra caution as getting off his wagon, &c., was incumbent upon him as a prudent and cautious man. Under this ruling the verdict below was for plaintiff in the sum of $1840. Assigning the charge of the court as error, the railroad company seek a reversal. They contend that in the case of a deaf man who drives upon the track of a railroad company because he don't hear the whistle, which every one around him hears, an extra degree of caution in the exercise of his unimpaired power of vision is requisite.

A man thus afflicted should have got out of the wagon and looked up and down the track, and his failure so to do is negligence per se, a thing which the Court is bound to take notice of and not leave as an open question of fact for the jury. It was also contended that the Court erred in affirming the point of plaintiff below to the effect that if the jury believed that the watch-house erected by the company obstructed the view of the track, the company were responsible. Exception was also taken to the action of the Court in leaving it as a fact for the jury to find whether the erection of the watch-house was or was not negligence on the part of the company; and also to its ruling in leaving to the jury to say whether or not deceased was guilty of contributory negligence in crossing the track after being warned, when, under the law, it should have charged that by his act he was so guilty.

Defendants in error, on the other hand, contend that the ruling of the Court below was correct. They aver that, as all the law required of a plaintiff in order to recover damages for his death was to stop, look and listen before crossing a railroad, and did not even require of him to prove affirmatively that he did this, it would have been error as establishing an entirely new measure of negligence for the Court below to have arbitrarily ruled that the decedent by his failure to get out of his wagon and look was guilty of negligence per se. The only way to determine whether or not he, owing to his peculiar affection should have done this, was by leaving it as a question of fact for the jury, which was exactly what had been done. Under advisement.

—The Louisville "Courier-Journal" touches up a Kentucky editor to this effect: "No, no. It's not egotism. It's only his way of talking. When he might say, 'It rained here yesterday,' he says: 'We were pleased to see it raining in our town yesterday.'"

New Advertisements.

New Advertisements.