not in occupation of the store either at the time of the insurance or at the time of the fire. The principal question was this: After the estate was transferred, did the insurance inure to the benefit of the new assignee without notice to the Company? The Court below held that it did not, and dismissed the action. As to the occupation, it appeared that Coté continued to occupy the dwelling above the store up to the 1st May, the store being closed. The Court was, therefore of opinion that the description was a correct one, and there could be no doubt that the agent at St. John's who took the risk knew all the facts. Under these circumstances the Court was of opinion that Auger, as official assignee, insured in his official capacity for the estate, and he provided for the case in which he should cease to be assignee, and made the insurance payable to the estate. The judgment below, which dismissed the action, must, therefore, be reversed.

Davidson & Cushing for appellant.

Lunn & Davidson for respondents.

CONTRIBUTORY NEGLIGENCE.

[Continued from p. 437.]

Nicholson v. *Erie Railway Co.*, 41 N. Y. 525.—The deceased was killed by defendants' cars while he was crossing their track. The track in question was a branch from their main track, into the premises of an iron company, and was jointly owned by the defendants and that company. The deceased had shortly before been in the employment of that iron company, and with other of the employees had been in the habit of crossing the branch track, without objection, on his way to and from his home. On this occasion he was holding down his hat to shield his face from a storm. Some coal cars of defendants, which had been standing on the branch track, without having their brakes set, were started by the wind, and driven up a slight acclivity, struck the deceased and killed him. He could have seen them by looking, as they were only two feet from him as he stepped on the crossing, but he did not look. The judge charged that it was the duty of defendants to set the brakes; there was a verdict for the plaintiff, which was now set aside.

Three opinions were delivered—by Smith, Earl, and Lott, JJ. Judge Smith held that the defendant owed the deceased no active duty, as he had no legal right on the premises. Judge Earl held the same substantially, except that he thought the deceased was lawfully on the premises, but added that at all events they were bound only to the exercise of ordinary care, and were not negligent under the circumstances. Judge Lott held that the deceased was guilty of contributory negligence, and gratuitously added his opinion that the defendants owed the deceased no active duty. With these three judges three others voted for reversal, and two were for affirmance.

Remarks—This would seem to be a clear case of contributory negligence, and for a nonsuit, if there ever was one, but the reversal seems to have been put on the ground that the defendants owed deceased no duty to set the brakes. The three judges who wrote, and Judges Grover and Ingalls voted on this ground; Judge Sutherland was for reversal on the ground of misdirection, and that it was a question for the jury whether the omission to set the brakes was negligence; Judges Lott and Grover also held that the contributory negligence was fatal to a recovery.

Harty v. *Cent. R. R. Co. of N. J.*, 42 N. Y. 468.—The deceased was walking along the track, not at a crossing, and stepped from one track to another, to avoid a coming train, and was killed by another coming up behind him. By looking he could have seen the danger, and he was familiar with the locality, and it was unnecessary for him to stand on the track. Held, first, that the defendants were not guilty of negligence, and second, that the deceased was guilty of contributory negligence.

Lannen v. *Albany Gas-light Co.*, 44 N. Y. 459.—Plaintiff was an infant. A leak had been caused in a gas-pipe in a house, owned by her father and occupied by him and others, by a tenant's piling coal against the pipe. An employee of defendants, sent by them to repair, lighted a match in the cellar and caused an explosion which injured plaintiff. There was no proof of any negligence on the part of plaintiff or her father, but even if there had been, the court said it was not contributory, for the mischief was caused solely by the negligence of defendants' servant.

Barker v. *Savage*, 45 N. Y. 191.—Plaintiff, a lame woman, 64 years old, was crossing a street