

of the action ; and the rule may therefore now be taken to be that letters of administration obtained pendente lite, and before trial, relate back and are sufficient to support the claim of a plaintiff to the status of administrator for the purposes of the action. That is an intelligible rule, and it is to be hoped it may escape being frittered away by judicial refinements and exceptions.

RAILROADS—FAILURE TO LOOK AND LISTEN RULE.

An interesting contribution to the proper determination of the "look and listen rule" is to be found in the recent case of *Garlich v. Northern Pacific Railway Company*, 131 Fed. Rep. 837. In this case, plaintiff, without occasion therefor, was walking near a city station in the space between railroad tracks and a river bank, used as a pathway, and ranging in width from 5 to 25 feet. A freight train was moving in the opposite direction on the second track from him, making the usual noise ; and, after looking back along the nearest track, which could be seen for about 500 feet, and seeing no train thereon, plaintiff walked on about 150 feet, without again looking back, when he was struck and injured by the end of the pilot beam on the engine of one of defendant's trains which came from behind him. The space between the track and the river bank was there 11 feet wide, and plaintiff was walking at a safe distance from the track until just before he was struck, when he made a side step toward the track. The court held that, with regard to the question of defendant's negligence, plaintiff was guilty of such contributory negligence as precluded his recovery for the injury as a matter of law.

The court in the course of an interesting opinion, said : "The law recognizes the track of an operated railroad as a place of danger, of which danger a view of the track conveys notice ; and that when a person goes upon such track, or so near as to be within the overhang of the cars or engine, ordinary care requires that he be alert in the use of his senses of sight and hearing to guard himself from harm. And no reliance on the exercise of due care by persons in control of the movement of trains or engines will excuse any lack of the exercise of such care by persons going upon such tracks. If the use of these senses is interfered with by obstructions or by noises, ordinary, reasonable care calls for proportionally increased vigilance: *Blount v. Grand Trunk Ry. Co.*, 61 Fed. Rep. 375, 9 C. C. A. 526 ; *Pyle v. Clark*, 79 Fed. Rep.