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WOLHFAHRT v. BECKERT.

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could have been made known by the authorized label. The statute requires the ringing of the bell or sounding of the whistle by an engine approaching a railroad crossing, but one who sees the train coming has all the notice and warning which these signals could give, and though they are omitted takes the risk of the danger which he sees and knows if he attempts to cross in front of the train. *Pakalinski v. N. Y. etc. R. Co.*, 82 N. Y. 424; *Connelly v. N. C. etc. R. Co.*, 88 N. Y. 246. So here if the warning was in truth given, if the deceased was cautioned that the medicine sold was a strong poison, and but ten or twelve drops must be taken, he had all the knowledge and all the warning that the label could have given, and could not disregard it, and then charge the consequences of his own negligent and reckless act upon the seller of the poison. But if no such warning was in fact given, its omission was negligence, for the results of which the vendor was liable both at common law and by force of the statute. *Thomas v. Winchester*, 6 N. Y. 409; *Loop v. Litchfield*, 42 N. Y. 358; *Wellington v. Downer Ker. Oil Co.*, 104 Mass. 64; 3 R. S., p. 4, ch. 1, title 6, sec. 25. By the statute it is made a misdemeanor for any person to sell "any arsenic, corrosive sublimate, prussic acid, or any other substance or liquid usually denominated poisonous without having the word 'poison' written or printed upon a label attached to the phial, box or parcel in which the same is so sold." The liquid sold to the deceased was in fact a poison, and death resulted from taking a trifle less than the quantity sold. The evidence showed that the "Black Drops" in both forms of preparation was "deadly," and that it was usually denominated poisonous is to be inferred both from its well known character and from the evidence given by the pharmacist, who said that unless selling upon the prescription of a physician he would mark upon the medicine the dose, or label it poison, or do both. Indeed, the learned counsel of the defendant concedes all this, for he says "if any third party, unacquainted with the real contents of the phial, had been injured, then an action would lie against the defendant," and the defence interposed rests wholly upon the fact asserted that full warning of the poisonous nature of the liquid was given, and the quantity which might be safely taken was stated to the purchaser. So that the question here whether the non-suit ordered by the

trial judge can be sustained or not turns solely upon the inquiry whether the warning was in fact given, and that again upon the question whether the jury would have been at liberty to disbelieve the evidence of the defendant's clerk. His story in itself was not improbable, so far as the defendant's actions are concerned. A druggist selling for ten cents a medicine which was a poison, and in a quantity capable of killing an incautious or ignorant purchaser would be quite likely, we should suppose, to give the brief information needed to protect his customer and shield himself from grave danger and disaster. Nor was the witness impeached by what are called the contradictions in his testimony drawn out on cross examination. They were very slight and utterly immaterial. But two facts disclosed by the proofs opened his testimony to doubt and, possibly, disbelief. He was an interested witness. He had violated the law by omitting the label required. The medicine he delivered had killed its victim. The consequences of the act upon himself, upon his future, and upon his employer were certain to be disastrous in the absence of explanation or justification. The motive to avert the danger even by falsehood was plain and powerful. The label was not on the phial. No such defence was possible. The only other one was to swear to the verbal warning given to the customer. The witness, therefore, stood in a position such as to provoke suspicion, arouse doubt, and justify watchful and rigid criticism. And then joined to that came the facts of the conduct of the deceased. If the evidence was true, he took the poison in a deadly dose, and from the hands of his wife with knowledge that it was a poison, and that he was largely exceeding the prescribed quantity. Nothing in the case permits us to imagine that he did so purposely and intended suicide. What can be said, and all that can be said, is that he relied upon the peddler's story of his experience in taking without injury one-half of a glass, rather than upon the druggist's warning that the medicine was a strong poison. That is possible, but has about it some doubtful elements. A man even of ordinary intelligence and very moderate prudence, who had been told by a friend that he had been cured by a particular medicine taken in the quantity of half a glass and thereupon went to a druggist, who was also a doctor, to purchase it, and was then distinctly told that the medicine