

ing is, that the deceased failed to exercise reasonable care, by not looking for an approaching car, and by negligently stepping upon the track and endeavouring to cross in front of it, thereby causing, or contributing to, the accident. If these answers stood alone, the plaintiff, notwithstanding the answer to question 6, even if supported by evidence, must fail, the rule being that where damage is the direct, immediate result of two operating causes, viz., the negligence of the plaintiff and that of the defendant, the plaintiff cannot recover. It was, however, argued that the answer to question 7 relieved the plaintiff of the consequences of the deceased's negligence. But there is, I think, no evidence to support the answer to question 7. The deceased was guilty of but one act of negligence, viz., endeavouring, under the circumstances of this case, to cross the track almost immediately in front of the car; and its negligent character was continuous. From the time of his stepping upon the track until the accident, he, in fact, undertook to clear the track before the car, which was within ten feet of him, would strike him.

The evidence shews that, under the circumstances, the motor-man used all reasonable means to avert the accident, but that it was not preventible. I, therefore, think there is no evidence to justify reasonable persons in finding, as the jury in their answer to question 7 have found, that the negligence of the deceased did not contribute to the accident up to the very moment of its happening. Thus eliminating the answers to questions 6 and 7, there remains the finding (which cannot be successfully attacked) that the deceased's negligence caused the accident.

I, therefore, think the appeal must be allowed with costs and the action dismissed with costs.

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FEBRUARY 4TH, 1913.

ELLIS v. ZILLIAX.

*Vendor and Purchaser—Contract for Sale of Land—Building Restrictions—Written Consent to Relaxation of Restrictions Obtained upon Condition as to Position of Building—Refusal of Purchaser to Fulfill Condition—Action for Specific Performance—Costs.*

Appeal by the plaintiff from the judgment of MIDDLETON, J., of the 6th November, 1912, dismissing without costs a purchaser's action for specific performance of a contract for the