The opinion of the court seems to favour the modification of the judgment in the *Keefe* case, but upon the facts it was not necessary to determine whether the charge of negligence against the defendant could be sustained. A child is bound to use such reasonable care as one of his age and mental capacity is capable of using, and his failure to do so is negligence.

INJURY TO PERSONS ON RAILROAD TRACK.—The Virginia Supreme Court, in *Virginia M. Railway Co.* v. *Boswell's Administrator*, decides that in the case of a trespasser on their track, who is killed or injured, the railroad company is not liable for anything short of wilful and wanton injury. In this case the track-walker of the railroad company discovered a man, about ten o'clock at night, lying on the track in such a position that a passing train would kill him, and when he aroused him, and warned him of his danger, the man showed no signs of intoxication. The track-walker then passed on, and the trespasser was killed about two hours later by an express train. It was held that the track-walker was guilty of no negligence, which rendered the company liable. It was contended that the failure of the track-walker to signal and stop the train was the proximate cause of the injury, and such negligence on the part of an agent as to leave the company liable for damages. The Court of Appeal decided against the contention. The deceased was a trespasser, and was guilty of gross and culpable negligence, either through wilfulness or intoxication. There was no evidence of his being ill. In cases of intoxication or gross recklessness, such as this, the prevailing opinion is stated to be that the company is not liable for anything short of wilful and wanton injury. In *Herring* v. *Railroad Co.*, 10 Ired. 402, two intoxicated slaves fell asleep upon the track, where they could have been seen by the engineer, if he had been looking, for a distance, variously estimated at from 200 yards to half a mile, and were killed by a passing train. It was held by the court that their being upon the track in a condition of helpless intoxication, was such contributory negligence as should prevent a recovery unless the company was guilty of wanton injury. See also Beach on Contrib. Neg. 294, note; and cases cited there, id. 205, note 3. But it was contended that the case came within the general rule, that the plaintiff may recover, although he has been guilty of negligence or want of ordinary care, which has contributed to cause the accident, if the defendant could, by the exercise of proper care and caution, after having knowledge of the plaintiff's negligence, have avoided the mischief which happened. *Railroad Co.* v. *Anderson's Administrators*, 31 Grat. 815; *Dun* v. *Railroad Co.*, 78 Va. 645; *Rudd's Administrators* v. *Railroad Co.*, 80 id. 546. The question then became whether, in the present instance, the track-walker had done all that could reasonably be expected of him. Upon this point the Supreme Court had no difficulty in deciding in the affirmative. When aroused and told that he must get up and go off the track, Boswell partly raised himself, leaned upon his elbow, and assented to the suggestion in such a way as to convince the track-walker that the deceased was capable of taking care of himself.