

U. S. Rep.] PENNSYLVANIA R. R. CO. v. BEALE—DIGEST OF ENGLISH LAW REPORTS.

seen or heard from there." This, in fact, left the question of negligence to the jury, upon a point not material. Indeed, the duty of stopping is more manifest where an approaching train cannot be seen or heard, than where it can. If the view of a track is unobstructed, and no train is seen or heard approaching, it might, perhaps, be asked, why stop? In such a case there is no danger of collision, none takes place, and the sooner the traveller is across the track the better. But the fact of collision shows the necessity there was of stopping, and therefore, in every case of collision the rule must be an unbending one. If the traveller cannot see the track by looking out, whether from fog or other causes, he should get out, and if necessary, lead his horse and waggon. A prudent and careful man would always do this, at such a place. In the *Hanover Railway Co. v. Coyle*, 5 P. F. Smith, 396, the plaintiff, a peddler, in the depth of winter, was driving inside of his covered waggon, with his head muffled up in a thick overcoat, and it appeared, that a traveller passing in the direction he was going, could not see up and down until within sixteen feet of the track. Yet these circumstances were not allowed to form any excuse for his negligence in omitting to stop. There never was a more important principle settled, than that the fact of the failure to stop immediately before crossing a railroad track, is not merely evidence of negligence for the jury, but negligence *per se*, and a question for the court: *North Pennsylvania Railroad Co. v. Heileman*, 13 Wright, 60. It was important, not so much to railway companies as to the travelling public. Collisions of this character have often resulted in the loss of hundreds of valuable lives—of passengers on trains—and they will do so again, if travellers crossing railroads are not taught their simple duty, not to themselves only, but to others. The error of submitting the question to the jury, whether, if the deceased had stopped, he could have seen or heard the approaching train, runs through the entire charge and answers of the learned judge below. He should, upon the uncontradicted evidence, have directed a verdict for the defendants.

Judgment reversed.

—*Legal Intelligencer.*

DIGEST.

DIGEST OF ENGLISH LAW REPORTS

FOR JANUARY, FEBRUARY, MARCH, AND
APRIL, 1873.(From the *American Law Review.*)

ACCOUNT.—See BANK, 1, 2; HUSBAND AND WIFE.

ACTION.—See INJUNCTION, 1; DAMAGES, 5.

ADVANCEMENT.

M. purchased a copyhold cottage in the name of his son, who was admitted tenant. M. shortly afterward gave the occupying tenant notice to quit, but allowed her to remain at an increased rent. M. received the rents, paid the quit-rent and costs of repairs, and treated the cottage as his own. On M.'s death it was testified that M. intended the cottage to be his son's after M.'s death. *Held*, that the cottage was not purchased as a gift to the son, but was taken in his name as trustee for his father.—*Stock v. McAvoy*, L. R. 15 Eq. 55.

See CY-PRES.

AFFIDAVIT.

Affidavits on behalf of the plaintiff taken before a notary-public in America, at a place one hundred and twenty miles distant from residence of any British consul, were allowed to be filed by the clerk of records and writs, with the written consent of the defendant.—*Lyle v. Ellwood*, L. R. 15 Eq. 67.

AGENCY.—See PRINCIPAL AND AGENT.

ANNUITY.—See PAYMENT; PENALTY.

ARBITRATION.

In a matter of general average the ship-owner and the owner of the cargo agreed to refer the question to the defendant, an average adjuster. *Held*, that the defendant was acting as a *quasi* arbitrator, and was not liable for want of skill or for want of care, or for negligence, if he acted honestly.—*Tharsis Sulphur Co. v. Loftus*, L. R. 8 C. P. 1.

ASSAULT.

It was held that there might be an indecent assault upon boys, although they submitted to the act in ignorance of its nature, without actual or active dissent.—*Queen v. Lock*, L. R. 2 C. C. 10.

ASSIGNMENT.—See PRIORITY.

AUCTION.—See ORDER OF COURT; VENDOR AND
PURCHASER.

AWARD.—See PENALTY.