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## Contributory Negligence—Railroad Crossings—The Stop, Look and Listen Rule

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(N. S.) 255; 2 Restat. of Contracts, sec. 548. And, therefore, by inference, a ransom contract between the person robbed and the robber is not void unless it involves the compounding of a felony or the suppressing of prosecution. *Schirm v. Wieman* (1906) 103 Md. 541, 63 Atl. 1056. From a practical standpoint it is hard to see how a victim could get the criminals into Court to defend a breach of the "valid" ransom contract. And it is equally difficult to think that any Court would allow the malefactors to recover.

The District Court regarded the "ransom" contract invalid in the light of the Missouri Statute against "Compounding Felonies" (ante) which reads "Every person having a knowledge of the actual commission of any—penitentiary offense—who shall take money or property of another, or gratuity or reward, or any promise, undertaking or engagement therefore, upon agreement or understanding express or implied, to compound or conceal such crime,"—or refrain from prosecuting or withholding evidence, etc. The Appellate Court held that this Statute was not broader than the Common Law principles applicable and that, regardless, the Bank was not accepting "property of another" or a "reward," but was only receiving back what belonged to it. However, the Court did not rest here; it went on to demonstrate that the agreement between the bank and the robbers was not express, and that, although an agreement may be implied from the evidence, facts and circumstances (*Mississippi Valley Trust Co. v. Begley* (1923) 298 Mo. 684, 252 S. W. 76) yet there was nothing in this transaction to warrant the inference that the bank had agreed to suppress prosecution or evidence, or to interfere with the police in bringing the criminals to justice. There are a number of presumptions that must be overcome before an illegal agreement may be implied. There must be a manifestation of assent of all the parties to the unlawful agreement. *Fosdick v. Vanarsdale* (1889) 74 Mich. 302, 41 N. W. 931. The presumption of good faith and proper motive always exists. *Mo. Pac. R. R. v. Prude* (1924) 265 U. S. 99. Where either one of two motives may be implied, that which is honest is preferred. *Alexander v. Fidelity Trust* (C. C. A. 3, 1917) 249 F. 1. But the reasoning of the District Court to the effect that only one motive may be implied in a transaction of this sort is compelling. It is difficult to conceive how the bank in the instant case could have taken part in long and haggling negotiations with the malefactors without gaining some information which would assist the police in tracking down the criminals. The negotiation necessarily hinged on an understanding that such information would not be divulged.

T. B. C. '35

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**CONTRIBUTORY NEGLIGENCE—RAILROAD CROSSINGS—THE STOP, LOOK AND LISTEN RULE.**—The plaintiff approached railroad tracks in his ice truck, going slowly, and stopped about ten or twelve feet from a sidetrack. On the sidetrack was a string of freight cars which shut off his view of the main track to the north. He heard no bell or whistle and so proceeded across the tracks. He was struck by a train coming from the north at a speed of about thirty miles an hour. The District Court held he had been guilty of negligence and directed a verdict for the defendant. Affirmed by the Circuit Court of Appeals and reversed by the Supreme Court of the United States. *Held*, a driver of a truck struck by a train at a crossing is not contributorily negligent as a matter of law in failing to stop, leave the truck and survey the

scene afoot when his view was obstructed by freight cars standing on a siding. It is a matter for the jury. *Pokora v. Wabash Ry. Co.* (1934) 54 S. Ct. 580.

The case is in accord with the prevailing American view, although there is much controversy on the subject. Of course, all the Courts recognize the duty to stop, look and listen at a crossing as an important part of the traveller's duty of care. The conflict concerns the degree of rigidity with which the rule is to be applied as a determination of the proper standard of care, and, consequently, the effect of a failure to stop, look and listen. On this question there are three main classes of holdings. The Courts of Pennsylvania in an early case, *Pennsylvania R. Co. v. Beale* (1873) 73 Pa. 504, 13 Am. Rep. 753 laid down the rule that there is an absolute duty to stop, look and listen, and that a failure to perform this duty is contributory negligence in all cases. This rule has been followed unbendingly by the Courts of that state but has received little encouragement elsewhere. *Ihrig v. Erie R. Co.* (1904) 210 Pa. 98, 59 Atl. 686; *Nolder v. Pennsylvania R. Co.* (1924) 278 Pa. 495, 123 Atl. 507. The second view is that the duty is conditioned upon the circumstances. Under this class some Courts hold that the duty may be declared as a matter of law if there are exceptional circumstances, such as a blind and dangerous crossing or obstructions near the tracks. *Central Coal and Coke Co. v. Kansas City Southern R. Co.* (Mo. App. 1919) 215 S. W. 914; *Crandall v. Hines* (1921) 121 Me. 11, 115 Atl. 464. Other Courts while subscribing to the same general view apply the rule more firmly and hold that failure will be held contributory negligence unless there are special circumstances, as where the traveller's failure is caused by some misleading act of the railroad company, or where the last clear chance doctrine is applicable, or where the failure is not a proximate cause. *Lefebvre v. Central Vermont R. Co.* (1924) 97 Vt. 342, 123 Atl. 211; *Cunningham Hardware Company v. Louisville and N. R. Co.* (1923) 209 Ala. 327, 96 So. 358. The third view is that the question of negligence in failing to stop, look and listen is a question of fact for the jury in practically every case. Most of the state Courts, and the Federal Courts since the instant case, are in accord with this view. *Cook v. Missouri P. R. Co.* (1923) 160 Ark. 523, 254 S. W. 680; *Norton v. Davis* (Mo. App. 1924) 265 S. W. 107; *Murray v. Southern P. R. Co.* (1917) 177 Cal. 1, 169 Pac. 675.

The instant case overrules the dictum of Justice Holmes in *Baltimore and Ohio R. R. Co. v. Goodman* (1927) 275 U. S. 66, 48 S. Ct. 24. There it was said that the traveller is under an absolute duty to stop, look and listen, and that if his view is obstructed he must get out of his car and survey the scene afoot, failure to do so being held contributory negligence as a matter of law.

J. D. Y. '36.

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**EMBEZZLEMENT, LARCENY, FALSE PRETENSES—TIME OF INTENT.**—The defendant, owner of a realty and loan business, held \$1,100 belonging to an investor and procured an additional \$400 from her to invest in a loan secured by a valuable lot, pointed out to the investor. It was later found that the deed of trust conveyed an adjoining lot of a value insufficient to secure the loan and also that the defendant had failed to have the deed of trust recorded. The trial resulted in a conviction of embezzlement by an agent, and the defendant appeals principally upon the theory that the evi-