1964

William H. Steele and Melva R. Steele v. Denver & Rio Grande Western Railroad Co. and Weyher Construction Co. : Brief of Respondents and Cross Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM H. STEELE and MELVA R. STEELE,
Plaintiffs-Appellants,

vs.

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY and WEYHER CONSTRUCTION COMPANY,
Defendants-Respondents, and Cross Appellant.

Case No. 10063

Brief of Respondents and Cross Appellant

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TABLE OF CONTENTS

CASES CITED

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STATEMENT OF THE KIND OF CASE

Plaintiffs brought this action against the defendants for damages as the result of injuries received by each of them when the pickup truck in which they were riding was struck by a train owned and operated by the defendant Denver & Rio Grande Western Railroad Company. Defendant Weyher Construction Company

was constructing a concrete overpass at the scene of the accident. The plaintiffs alleges that Weyher Construction Company was negligent in constructing an access way to the railroad tracks where the overpass was being constructed. This access way was used to gain access to the railroad switch terminals located nearby and also to move equipment of defendant Weyher Construction Company so that the concrete overpass could be constructed.

DISPOSITION IN LOWER COURT

The defendants filed motions for summary judgment supported by affidavits, photographic exhibits, and the depositions of the plaintiffs showing that at the time the accident occurred, the plaintiffs were aware of the railroad crossing and yet drove upon the tracks and stopped their pickup truck directly in the path of an oncoming train that was so near to the pickup truck that it could not stop in time to avoid the collision. (R. 60). The matter was argued to the lower court at the pre-trial conference, the Honorable A. H. Ellett presiding. Plaintiffs offered no counter affidavits or other evidence in opposition to defendants' motions. The trial court granted summary judgment against plaintiff William H. Steele as to both defendants and against Melva R. Steele as to defendant Weyher Construction Company but denied the railroad's motion for summary judgment against Melva R. Steele. (R. 66). The court then entered a pre-trial order setting forth

the sole issue between plaintiff Melva R. Steele and the railroad company, the issue being a determination of whether or not the railroad engineer gave a warning signal by whistle or bell as he approached the crossing. (R. 74, Tr. 1 to 9).

RELIEF SOUGHT ON APPEAL

Both defendants seek affirmance of that part of the lower court's order granting summary judgment against plaintiff William H. Steele and Melva R. Steele. Defendant Denver & Rio Grande Western Railroad Company further seeks reversal of the lower court's order refusing to grant that defendant's motion for summary judgment against Melva R. Steele.

STATEMENT OF FACTS

In order to promote clarity, the parties will be referred to herein as plaintiffs and defendants.

Defendant Weyher Construction Company was awarded a contract by the Utah State Road Commission to erect a concrete overpass to carry vehicle traffic over the railroad tracks of the defendant Denver & Rio Grande Western Railroad Company. The fill dirt at both ends of the overpass had been placed about two years prior to the construction of the concrete overpass and had been settling for this time. The fill dirt was not placed at the site of the overpass by Weyher Construction. Its contract was only for the erection of the

concrete overpass connecting the elevated earth filled approaches to the tracks. (R. 62-63). On the morning of October 19, 1961, the plaintiffs were intending to go to a nursery east of the railroad tracks. They drove upon the old roadway leading to the fill and overpass that was being constructed. As they approached the beginning of the fill, each of them saw that the road had been barricaded with a fence and a sign was erected in the center of the road stating "road closed". (Plaintiffs' depositions, 9 to 11, 39). Plaintiffs further saw that men were working on the concrete overpass. It was a clear sunny morninfg and visibility was good. (Plaintiffs' depositions 12, 40 and 41). They noted that there was an access way south of the fill running parallel with the fill to the railroad tracks. In spite of the sign stating that the road was closed, they drove around the fill dirt on the south, the fill running approximately east and west, and approached the railroad tracks. Mr. Steele admitted that there were no signs indicating that he should turn on to the access way or that this was a detour. (Plaintiffs' depositions 10 & 11). He approached the railroad tracks with the windows on his pickup truck rolled down. (Plaintiffs' deposition 12). There was a sign near the tracks stating that the area was private property and a railroad right of way, and that trespassing was at person's own risk. (Exhibits 2, 3 & 4). Just as Mr. Steele drove upon the tracks he looked up toward the top of the overpass where the men were working and made no observation for trains. (Plaintiffs' depositions 15 & 17). Mrs. Steele suddenly

exclaimed that they were directly in the path of the train which was just a matter of a few feet from their truck at that time. (Plaintiffs' depositions 14, 15, 41 and 42). The diesel engine struck the plaintiffs' pickup truck and carried it a short distance south of the point of impact before casting it off to the west of the tracks. Plaintiffs were thereafter removed to a hospital to be treated for their injuries.

POINTS URGED FOR AFFIRMANCE

POINT I

THE COURT PROPERLY GRANTED SUMMARY JUDGMENT AGAINST THE PLAINTIFFS AND IN FAVOR OF DEFENDANTWEYHER CONSTRUCTION COMPANY.

POINT II

THE COURT PROPERLY GRANTED SUMMARY JUDGMENT AGAINST THE PLAINTIFF WILLIAM H. STEELE AND IN FAVOR OF DEFENDANT DENVER & RIO GRANDE WESTERN RAILROAD.

POINT III

THE COURT PROPERLY REFUSED TO PERMIT THE APPLICATION OF THE DOCTRINE OF LAST CLEAR CHANCE UNDER THE FACTS OF THE CASE.

POINT URGED FOR REVERSAL

THE COURT ERRED IN REFUSING TO GRANT SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AND AGAINST PLAINTIFF MELVA R. STEELE.

ARGUMENT

POINT I

THE COURT PROPERLY GRANTED SUMMARY JUDGMENT AGAINST THE PLAINTIFFS AND IN FAVOR OF DEFENDANT WEYHER CONSTRUCTION COMPANY.

Mr. Setele testified in his deposition that as he approached the overpass he noted that the road ahead of him was barricaded and that there was a sign stating "road closed". (Plaintiffs' deposition pages 10 and 11, Appellant's brief, page 3). He then noted that about 100 feet west of the barricade and this sign, there appeared to be a turnoff south of the road he was traveling and turning to the east going along the south side of the fill dirt. He proceeded to take this dirt access way driving at about 15 or 20 miles an hour. (Plaintiff's deposition, page 14). Just as he approached the railroad tracks, he looked up to the top of the overpass to watch the men working. While watching the men, he drove upon the railroad tracks. It was at this

moment that his wife shouted to him to look and he then saw the on-coming train and the accident occurred. (Plaintiff's deposition 14 & 15). He admittedly did not stop before driving on to the tracks. He said he hadn't noticed the tracks as he was looking up at the men working on top of the overpass as he approached and drove upon the track. He never looked to his left or to his right before driving upon the track. (Plaintiff's deposition, page 27). He admitted that had he stopped within 10 feet of the railroad track, he would have had visibility along the track in the direction from which the train approached. (Plaintiff's deposition, page 28).

In Mrs. Steele's deposition, she admits that there was a sign stating "road closed". (Plaintiff's deposition, page 39). After her husband had driven onto the access way leading to the tracks, she requested that he turn around and go back. (Plaintiff's deposition, page 39). When they reached the railroad track, the train was right upon them and the impact took place. Defendant's counsel asked her if she suggested to her husband that he stop before he got onto the track and she replied:

> "Well, I thought he knew. He had always took precautions before." (Plaintiff's deposition Page 42).

She admitted that before they got to the tracks she could see the tracks. When asked why she wanted her husband to turn around and go back she answered:

> "Well, I guess the obstructed view . . . you just couldn't see from the north . . . I imagine that is the reason I said, 'Let's go back.' "

She was then asked:

> "I say, is that the reason you suggested you turn around, because you couldn't see to the north?"
>
> ANSWER: "I imagine it would. A woman always has an intuition. You can't tell why she has it or how she has it, it is just there."
>
> QUESTION: "You were concerned about a train maybe coming from the north?"
>
> ANSWER: "Couldn't hear one; I never heard no whistles or anything."
>
> QUESTION: "I say, is that the reason you suggested you turn around, because you couldn't see to the north?"
>
> ANSWER: "I imagine it would." (Plaintiff's deposition Pages 42 and 43).

Mrs. Steele said that the train was coming under the viaduct as her husband drove upon the track. She was again asked in her deposition:

> "you saw the tracks before you got to them, I assume."
>
> ANSWER: "Yes."
>
> QUESTION: "And you knew the tracks were there, I assume."
>
> ANSWER: "Yes, I think that is why I suggested, 'Bill, turn around and go back.' " (Plaintiff's deposition Page 51).

The affidavit of Maurice Anderson, project engineer for the State of Utah on the site in question, was filed wherein Mr. Anderson testified that the fill dirt

constituting the approach to the overpass was placed in the area by a contractor other than defendant Weyher Construction Company and that the road had been closed pursuant to his order. A barricade in the form of a wire fence was placed across the roadway with a sign stating "ROAD CLOSED". (R. 62). Interrogatories were submitted to the plaintiffs wherein they were asked:

> "Did the driver of the truck, William H. Steele, look to his left and to his right before driving onto the railroad tracks?"
>
> ANSWER: "No". (R. 55).

Plaintiffs state in their brief that they heard the train when they were about ten feet from the railroad tracks but "this warning came too late . . ." (Appellants' Brief, Page 3). They concede that the access way leading to the railroad tracks was a private way meant only for the use of the defendants. Both plaintiffs were trespassers. (Brief Page 4). The rights and duties of the parties should be measured accordingly. Plaintiffs make every effort to characterize the scene of the accident as a hidden or dangerous trap. Mrs. Steele admonished her husband to turn around and go back because of her fear of the very danger that existed. She admitted telling him to turn back because she thought a train might be coming and the view to the north was somewhat obstructed. (Plaintiff's deposition, Pages 42, 43 & 51). Her fears proved to be well founded. The tracks were not hidden, nor were they dangerous if due care had been exercised. To the contrary,

the danger if any, was open and obvious and was known to Mrs. Steele, who brought it to her husband's attention. (See photo Exhibits 1 to 4). They try to excuse their negligence by claiming an obstructed view to the north created by the fill dirt constituting the approach to the overpass yet would burden the engineer operating the train with the duty of seeing through the fill and being aware of their unauthorized approach to the tracks. Plaintiffs admit that their view was obstructed until they were within ten feet of the tracks. They also admit that the truck in which they were riding did not stop as they approached the track but continued on to the tracks and the impact then occurred. It is self-evident that if they could not see the train until they were close to the tracks, the engineer of the train was under the same disability until he was so close to the truck that he would have absolutely no opportunity or human ability to stop the train in time to avoid the collision.

Plaintiffs further attempt to place themselves in the legal relationship of invitees or licensees. By their own admission they were driving upon a private access way and the signs had warned them that the road was closed. They became trespassers and the duty owed to them was the duty owed to any other trespasser.

In their brief, plaintiffs cite several cases and text authorities in an effort to support their theory that certain duties and obligations are owed to invitees. It is respectfully submitted that none of the texts cited

or cases referred to apply to the instant situation. The citations refer to cases involving business invitees or persons coming upon the property by implied invitation for the benefit of the owner. Plaintiffs were trespassers and therefore the authorities cited by the plaintiffs do not apply.

Plaintiffs fail to strengthen their position by these contentions as the cases cited clearly show that before a given condition can be construed as being a trap, it must be shown that it could not be discovered by the exercise of reasonable diligence. The testimony of Mrs. Steele clearly demonstrates that she was fully aware of the existence of the tracks and the possibility that a train might very well be approaching from the north. Had her husband, who was driving the pickup truck, exercised his own powers of observation, he too would have been aware of the tracks. He certainly cannot be heard to say that he did not or could not see what was clearly obvious and was there to be seen.

Reasonable minds could not differ in concluding, as did the lower court, that the plaintiffs were trespassers upon the railroad tracks. Mrs. Steele admittedly knew of the tracks and asked her husband to return to the highway for fear of the very accident that occurred. Mr. Steele, in proceeding to drive upon the railroad tracks without first looking for a train, was the sole cause of the accident. The defendant Weyher Construction Company did not owe to the plaintiffs any duty greater than it owed to any other trespasser. No breach of duty can be shown.

POINT II

THE COURT PROPERLY GRANTED SUMMARY JUDGMENT AGAINST THE PLAINTIFF WILLIAM H. STEELE AND IN FAVOR OF DEFENDANT DENVER & RIO GRANDE WESTERN RAILROAD.

For the reasons set forth in Point I, the court acted properly in granting judgment against plaintiff William H. Steele and in favor of the railroad. In the case of Abdulkadir vs. The Western Pacific Railroad Company, 7 Utah 2nd 53, 318 P. 2nd 339, at page 56, this learned court said:

> "It is a rule universally recognized, and settled beyond question in this jurisdiction, that the duty of care requires one entering upon a railroad track to use every reasonable opportunity to look and listen for approaching trains and to exercise caution to avoid being struck. Where the physical facts and circumstances are such that he could, by looking or listening, have seen or heard the approach of the train, he cannot be heard to say that he looked and listened, yet did not see or hear it. *Under such circumstances it is but natural to presume that the traveler either did not look or listen, or that he failed to heed what he perceived, and such conduct will generally impute contributory negligence as a matter of law.* Plaintiff does not disagree with the above rule but seeks to bring this case within those exceptions where there are obstructions, distractions, or other extenuating circumstances which may obstruct the traveler's view, or engage his attention, or lead him to rely on safety, or

otherwise tend to prevent or excuse him from discovering an approaching train." (Italics ours).

This court in considering the defense set forth by the plaintiff therein to excuse his actions further said:

> "Even if the light on the train might have been confused with lights on the highway at some distance, as close as the train must necessarily have been to these travelers when they stopped upon the tracks, it obviously would have been distinguishable had they looked. If we assume, as plaintiff suggests, that there was no light on the train until the instant before impact, such an object as a train coming toward them on the tracks would certainly not be invisible, nor noiseless. *The testimony that even though they were observing for trains they neither saw nor heard one is too incredible to be accepted and comes squarely within the rule that one cannot be heard to say that he looked and listened, yet did not see or hear what was there plainly to be observed.*" (Italics ours).

The instant case is one in which the facts clearly show that Mr. and Mrs. Steele cannot be heard to say that they looked and listened yet did not see or hear what was plainly there to be observed.

In the case of Gregory vs. Denver & Rio Grande Western Railroad Company, 8 Ut. 2nd 114, 329 P. 2nd 407, wherein the plaintiff's husband drove upon a crossing of several railroad tracks and, not observing a watchman or flagman that he said was usually there, continued to drive across the tracks and was struck before clearing all of the tracks, this court said at page 117:

> "The plaintiff's own witness testified that from the point where the driver of plaintiff's automobile entered the crossing, the track upon which the collision occurred was visible for a distance of one-quarter to one-half mile to the north."

The court then affirmed the trial court's granting of a directed verdict in favor of the defendant. In his concurring opinion, Mr. Justice Crockett stated:

> "There was no reason why he could not have seen the train which was coming from the north. Under the old and well established rule, this impails him upon the horns of a dilemma. He either failed to look or he looked and failed to heed."

In the same case and in a separate concurring opinion, Mr. Justice Wade further said:

> "I concur with the result because I think *the failure of the driver of the automobile to look to see if a train was coming was the sole proximate cause of the accident.*" (Italics ours).

In our instant case, the evidence clearly shows that the fill dirt placed in the area was not placed there by the railroad and it certainly should not be charged with creating a hazardous condition over which it had no control.

In the case of Benson vs. The Denver & Rio Grande Western Railroad Company, 4 Ut. 2nd 38, 238, P. 2nd 790, this court stated:

> "In both these cases the confusing situation creating a hazard was caused by the railroad company rather than by outside agents. *The*

plaintiff has not cited any cases in which the court has held contributory negligence to be outside the general rule when the hazard affecting visibility was not caused or at least partially caused by the railroad company itself.

"*Even if the railroad company is the cause of the hazard, the travelers are not absolved from the degree of care required of ordinary, reasonable and prudent men.* The court in the Pippy case, supra, at Page 451 of 79 Utah, at Page 310 of 11 P. 2nd said: 'the conflict however, does not go to the proposition that under complicated conditions the traveler is relieved from looking and listening for the approach of trains, or from exercising due care and vigilance to avoid injury. That is his duty at all times and on all occasions in approaching a railroad crosing and in driving over it, *whether the view is obstructed or unobstructed, and the greater the hazard or danger surrounding him, the greater is the care required of him.*" (Italics ours).

It is clear from the record that the sole cause of the plaintiffs' injuries was the failure of Mr. Steele to take proper precautions before driving upon the railroad tracks. Had he looked he surely would have seen the approachig train. The exhibits demonstrate, and the plaintiffs admit, that there was an opportunity for them to have seen the train before driving upon the tracks. Mrs. Steele did not suggest that Mr. Steele stop before he got to the tracks as she said:

"Well, I thought he knew. He had always took precautions before." (Plaintiff's deposition, Page 42).

Accordingly, we respectfully repeat that the lower court properly granted a summary judgment in favor of the defendant Denver & Rio Grande Western Railroad and against the plaintiff William H. Steele, and its judgment should be affirmed in that respect.

POINT III

THE COURT PROPERLY REFUSED TO PERMIT THE APPLICATION OF THE DOCTRINE OF LAST CLEAR CHANCE UNDER THE FACTS OF THE CASE.

Counsel for plaintiff William H. Steele argues in Point II of his brief that the Doctrine of Last Chance operated to give this plaintiff an opportunity to carry his care to a jury. The facts are clear. The testimony of both the plaintiffs demonstrates that at the time they drove upon the railroad tracks the locomotive was in immediate and close proximity to them and it was just a matter of seconds before the impact occurred. Their depositions show that when their automobile was driven into a position of peril on the tracks, it would have been impossible for the locomotive to stop to avoid the collision.

The case of Lawrence vs. Bamburger Railroad Company, 3 Ut. 2nd 247, 282 P. 2nd 335, and cited by the plaintiffs, points out the problem of stopping a train when the court stated:

> "The motorman or engineer operating a train may assume, and act in reliance on the assumption that a person on or approaching a crossing is in possession of his natural faculties and aware of the situation, including the fact that a train is a large and cumbersome instrumentality which is difficult to stop, and that the person will exercise ordinary care and take reasonable precautions for his own safety."

In the instant case, the plaintiffs by their own testimony readily admit that the fill dirt constituting the approach to the overpass completely blocked any view they had to the north, the direction from which the train was coming. If they couldn't see, obviously, the engineer was under the same disability.

Counsel then cites the Lawrence case, supra, as holding that when someone approaching a track is under a disability the railroad engineer has a greater duty to exercise due care. Counsel misapplies this court's holding in that case. It seems clear from the court's opinion that the disability being referred to was that of someone with an obvious limitation or disability such as children, blind persons, persons in perhaps wheelchairs or walking with crutches, or obviously very aged, etc.

In the case of Charvoz vs. Cottrell, 12 Ut. 2nd 25, 361 P. 2nd 516, this learned court in discussing the doctrine of last chance, said:

> "However, the doctrine of last clear chance contemplates a last clear chance, not a last possible chance. The doctrine implies thought, appreciation, mental direction and the lapse of

sufficient time to effectually act upon the impulse to save another from injury."

In the case of Fox vs. Taylor, 10 Ut. 2nd 174, 350 P. 2nd 154, this court stated:

> *"Where the defendant does not actually know of the plaintiff's situation of peril, the doctrine can only properly be applied where the plaintiff has gotten into a position of inextricable peril.* An illustration of this is where a person has caught his foot in a railroad switch, or is in some other similar predicament, so that he is thereafter unable to avert the injury. In such a situation, the plaintiff's negligence has come to rest. In such circumstances the defendant may be held responsible if he either knows, or in the exercise of reasonable care should know, of the plaintiff's helpless situation *in time to avoid the injury and fails to do so."* (Italics ours).

This court then pointed out that where a pedestrian walked into the path of an oncoming car, the doctrine of last clear chance would not apply. The court further said:

> "She was either in inextricable peril or she was not. If she was not in inextricable peril, then at any instant up to the time she got into such predicament, by the exercise of reasonable care, she could have observed the oncoming car and have avoided being hit. On the other hand, she could only have gotten into inextricable peril by getting into the path of the defendant's car, and her peril could be considered inextricable only if the defendant was then too close to avoid striking her. Thus, by the very description of the situatiion, he did not have the 'last

clear chance' to avoid the injury. As the phrase indicates, *it must be a fair and clear opportunity and not a mere possibility that the collision could have been avoided.* It is our conclusion that the trial court was correct in refusing to submit the case upon the doctrine of last clear chance." (Italics ours).

The facts in the instant case, as testified to by the plaintiffs, clearly show that the defendant's locomotive was so close to the plaintiffs at the time they drove upon the tracks, that the engineer had no possible opportunity of avoiding the collision. The doctrine of last clear chance therefore does not apply and we respectfully submit has no application under this factual situation.

POINT URGED FOR REVERSAL

THE COURT ERRED IN REFUSING TO GRANT SUMMARY JUDGMENT IN FAVOR OF THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY AND AGAINST PLAINTIFF MELVA R. STEELE ON THE ISSUE OF THIS DEFENDANT'S DUTY TO SOUND A WARNING SIGNAL OR HORN.

As has been previously said, the access way that the plaintiffs were driving upon was a private way, by their own admission in their brief at page 4. The duty of the railroad engineer to sound his horn could only arise at a time when he knew or should have known that the plaintiffs were entering upon or about to enter

upon the railroad tracks. The plaintiffs were trespassers and the railroad engineer owed no duty to them under this factual situation. This was not a railroad crossing. By their testimony they admit that neither could see each other until they were a matter of 10 feet from the tracks. (Plaintiff's deposition, Page 28). They were driving about 10 or 15 miles per hour. The train was approaching at such close proximity that the impact occurred in a matter of a second or two after they drove upon the tracks. The engineer could only have been aware of the approaching truck when it reached a point approximately 10 feet from the tracks. At this time, the plaintiffs were not in a position of inextricable peril but could have stopped before driving upon the tracks unless they were driving too fast for existing conditions. As they continued to approach and drive upon the tracks, the engineer of the train was then so close that he could not avoid the impact as it occurred almost the instant they drove upon the tracks. (Plaintiffs' depositions, Pages 14, 15, 41 and 42).

On Page 3 of the appellants' brief, they say:

> "The first warning the plaintiffs had that they were in danger was at a point about 10 feet from the railroad tracks when they heard a noise and looked up and saw the train about to strike their pickup. This warning came too late and the train collided with the pickup . . . "

By their admissions they heard a warning before driving upon the tracks. It was not the warning that came too late but the inattentiveness of the plaintiffs that caused

the accident. Their own negligence in failing to drive more slowly and to keep a reasonable lookout for the train before entering upon the tracks was the sole proximate cause of the collision.

We respectfully submit that the lower court should have granted defendant Denver & Rio Grande Western Railroad Company's motion for summary judgment.

CONCLUSION

In conclusion, it is our position that the lower court properly granted summary judgment with respect to the matters set forth in respondent's Points I, II, and III, and that the same should be affirmed. We feel the lower court erred in refusing to grant a summary judgment on the issue of the sounding of a warning by the defendant railroad company and its ruling should be reversed and summary judgment entered, as a matter of law, in favor of the defendant Denver & Rio Grande Western Railroad Company and against the plaintiff Melva R. Steele.

Plaintiffs have cited several cases in their brief which have not been referred to by defendants as they are not in point with the questions involved on this appeal. Reference thereto would necessarily enlarge the defendant's brief and unnecessarily burden this court.

It is further respectfully submitted by the defendants that plaintiffs' brief is silent as to any reference

to the record in support of plaintiffs' statements. In answering plaintiffs' brief, defendants have made references to the record on the points raised by the plaintiffs which should properly draw the court's attention to the issues.

This court has clearly stated its position as to when summary judgment should be granted by saying:

> "We are in accord with the idea that the right of trial by jury should be scrupulously safeguarded. This, of course, does not go so far as to require the submission to a jury of issues of fact merely because they are disputed. If they would not establish a basis upon which plaintiff could recover, no matter how they were resolved, it would be useless to consume time, effort and expense in trying them, the saving of which is the very purpose of summary judgment procedure."

See Abdulkadir vs. Western Pacific Railroad Company, supra, at Page 55.

In conclusion, may we quote this court's findings in the Benson case, supra, which we deem applicable in our instant case, wherein this court said at Page 44:

> "We believe that all reasonable men would agree that if plaintiff had looked, he could have seen the approaching train in time to stop and avoid the collision, *unless he was traveling too fast under the existing conditions to do so.*"

Respectfully submitted,

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