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Grade Crossing Rule

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the bill (S. B. 65) was to fix maximum limits at a more reasonable point, and that the term "loss", as applied to the table for specific benefits, was not to be confined to "loss by severance."

It became necessary to construe the amendment in a specific case recently, and the Bureau, by a divided vote, held that the term "loss" meant "loss by severance" only. The reasons given for such construction were: That the first part of paragraph E of Section 3 (though unchanged) related only to partial permanent disability of the body (although the words "of the body" have never been in the law); that the law, as it was prior to this amendment, gave the Bureau authority to fix the schedule of benefits, that, when the Bureau fixed such schedule by a Rule, it made provision for ankylosed (stiff) joints, and that the Legislature should, therefore, have incorporated the Rule or added to the word "loss" the words "or loss of use," if it intended the schedule to cover ankylosis.

The dissenting view, as expressed by Commissioner Wenzel, was: That the foregoing construction was technical rather than liberal; that it was questionable in the light of the "reasonable interpretation" enjoined by courts of last resort; that, in effect, it was saying that a stiff finger or hand was not lost, regardless of how useless it might be; that, if the theory were followed to its logical conclusion, voluntary submission to an amputation—if not actually required by and at the time of treatment of the injury—would not entitle the claimant to compensation for the permanent disability, because one could not be said to "lose" that which he voluntarily cut off; that the majority view expressed by the Legislature, though unrecorded, should govern on the question of "intent"; and that, if the Bureau felt justified in making a general rule before, it should apply the same standard of interpretation now.

GRADE CROSSING RULE

One G. was driving an automobile truck along a public highway at a rate of 10 to 12 miles per hour as he approached a railroad crossing with which he was familiar. It was daylight. About 40 feet from the crossing he cut this rate down to 5 or 6 miles per hour. View of the track was obscured by a section house on the left of the driver. This prevented a clear view of the whole track in that direction until a point about 20 feet from the first rail was reached. A train, coming from the left at a speed of about 60 miles per hour, hit the truck, G. being unable to stop the truck after he saw the train. G. was killed. The failure to stop was held to be contributory negligence, defeating the right to recover from the railroad company, Justice Holmes using the following language: "When a man goes upon a railroad track he knows that he goes to a place where he will be killed if a train comes upon him before he is clear of the track. He knows that he must stop for the train, not the train stop for him. In such circumstances it seems to us that if a driver cannot be sure otherwise whether a train is dangerously near he must stop and get out of his vehicle although obviously he will not often be required to do more than to stop and look. It seems to us that if he relies upon not hearing the train or any signal and takes no further precaution he does so at his own risk. If, at the last moment, G. found himself in an emergency it was his

own fault that he did not reduce his speed earlier or come to a stop. It is true . . . that the question of due care very generally is left to the jury. But we are dealing with a standard of conduct, and when the standard is clear it should be laid down once for all by the Courts." —*B. & O. RR. Co. vs. Dora Goodman,* 48 *Sup. Ct. Rep.* 24.

We call attention to this statement particularly, "It seems to us that if he relies upon not hearing the train OR ANY SIGNAL and takes no further precaution he does so at his own risk," and wonder how far the Court would apply the rule where there are gates or other mechanical devices, particularly if the same should happen to be out of order.

PROSECUTING OFFICIALS

The Journal of the American Judicature Society, discussing "What Is Wrong with the Prosecutor" in the October issue, briefly dismisses two proposals for dealing with what it claims to be general dissatisfaction with our prosecuting officials, and follows this with its own proposal.

The proposals dismissed are: The public defender plan, which it recognizes as serviceable in large cities, but otherwise characterizes as "a mere patch on a defective system"; and the plan of appointing prosecutors by the courts, which, it maintains, is borne of a false conception of the office and is also unconstitutional.

The Journal's constructive suggestion is that the local prosecutor should serve as the appointed deputy of the attorney general, should be chosen from among the older members of the Bar, be provided with an adequate salary, be permitted to hold office during good behavior, and be transferred from point to point as the respective abilities of the men and the importance of the trials may demand. This, it is contended, will coordinate the work of the prosecutor's office, remove the individual prosecutor from the influence of politics, and enable him to do his work with greater freedom and without working unreservedly for convictions in order to acquire professional reputation.

Coming, as it does, from a Journal of very high standing professionally, the suggestion is worth more than a passing thought on the part of the North Dakota Bar.

AN IMPRESSIVE RECORD

Great Britain's experience with unemployment insurance and old age pensions is one that should cause the American taxpayer to pause before assuming the burdens of a "dole system." In 1911 Great Britain paid old age pensions to 613,873 persons, the amount paid being $30,405,892. By 1925 the number of persons receiving aid had increased to 900,536, and the amount paid to $107,822,174. During the period from 1912 to 1926 the number of recipients of outdoor relief also rose from 408,106 to 1,003,399.

EIGHT HOUR LAW

The County Court of Ward County recently held the North Dakota Eight Hour Law for Women unconstitutional, in cases brought by the Minimum Wage Department of the Workmen's Compensation Bureau.