

The court holds that the circuit court has jurisdiction of the prosecution in question notwithstanding pendency of appeal on another cause, and that cumulative sentences may be imposed without any statutory authority for so doing. One convicted and sentenced may be tried for another crime as against the contention that he is civilly dead. Writ denied and motion for rehearing overruled.

GRADE CROSSING INJURIES—CARE REQUIRED OF AUTOMOBILE DRIVER IN PERIL.

Norton vs. Davis, 265 S. W. 107. (Mo. App. 1924).

Plaintiff while driving in an automobile was struck by a train of defendant where its tracks cross a public road, the engineer sounding no alarm. Plaintiff's view of the tracks was obscured until she reached a point only about eleven feet from the right of way. The evidence shows the plaintiff to have been running the car at about fifteen miles an hour, that after the brakes were applied the car was stopped within twelve feet but that she had driven twenty-seven feet after first discovery of the train, due to her confusion and fright occasioned by the defendant's failure to sound an alarm. The issue of contributory negligence was decided in favor of the plaintiff by the jury.

The evidence was held not to show the plaintiff's failure to look for the train close to the crossing. The failure of one who has looked and listened for a train, to keep a foot on the brake, was held not negligent in itself. If confusion resulted in an automobile driver from the railroad's negligence, if there was a reasonable apprehension of peril, if the danger appeared so imminent as to preclude deliberation, the driver was not contributorily negligent. This is true even though the automobile could have been stopped before reaching the track, and the peril was not actual. It was not necessary for plaintiff to allege due care because that was a matter of defense. Judgment for plaintiff affirmed.

INJUNCTION TO RESTRAIN CONTINUANCE OF A NUISANCE.

Elliott Nursery Co. v. Du Quesne Light Co. (Supreme Court of Pa., July, 1924) 126 Atlantic 345.

Plaintiff operates an extensive nursery adjacent to a tract on which defendant's electric power plant is located. The nursery existed for some