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# West Virginia Law Quarterly

## And THE BAR

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TORTS—CONTRIBUTORY NEGLIGENCE—DUTY TO STOP, LOOK AND LISTEN.—The Supreme Court of Appeals in a recent case,<sup>1</sup> has corrected a false impression of the rule in West Virginia regarding the care to be exercised by a traveler before attempting to cross a railroad track. The misunderstanding arose from the language used in the syllabus in the case of *Cline v. McAdoo*,<sup>2</sup> which is as follows: "As many times decided, it is the duty of a traveler on a public highway, on approaching a railroad crossing, to stop, look and listen, without which, if injured, he will be guilty of contributory negligence." This statement has led at least one trial court into error<sup>3</sup> and has resulted in West Virginia being classed with Pennsylvania, in a widely read text-book,<sup>4</sup> as holding that the duty to stop, look and listen is absolute.

In the case of *Bonar v. Baltimore & Ohio R. Co.*,<sup>5</sup> plaintiff's automobile, while crossing the tracks, was struck by defendant's engine. The defense was contributory negligence. It appeared

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<sup>1</sup> *Bonar v. Baltimore & O. R. R.*, 113 S. E. 766 (W. Va. 1922).

<sup>2</sup> 85 W. Va. 524, 102 S. E. 218 (1920).

<sup>3</sup> *Bonar v. Baltimore & O. R.*, *supra*, note 1.

<sup>4</sup> BERRY, *THE LAW OF AUTOMOBILES*, 3rd ed., p. 674.

<sup>5</sup> *Supra*, note 1.