we do not see that such fact should excuse the plaintiff for voluntarily leaving the place which the defendants had appointed for taking up passengers, and going to another place, where the dangers were greater, without invitation of any sort, and merely to gratify his own curiosity. Nor are we able to say that the fact that certain railroad employés were at work on the railroad track between the gaps in the fence excused the plaintiff for approaching nearer to the burning tank than the openings which had been made in the fence for the use of passengers. These employés had duties to perform in clearing the track, which rendered it necessary for them to assume greater risks than passengers were at liberty to assume while the relation of carrier and passenger existed, inasmuch as the defendant company had clearly indicated to passengers, by making openings in the fence, what route they would be expected to take in passing by the burning tank, what part of the right of way they should avoid, and where they should remain until they were taken up by the train. The high degree of care which the law exacts of a carrier of passengers entitles the carrier to insist that passengers shall remain in such places as it has provided for them, and that they shall also comply with such reasonable regulations for their safety and comfort as the carrier may prescribe. If a passenger of mature age leaves the place which he knows has been provided for him, and without any occasion for so doing, or to gratify his curiosity, goes to another, where the dangers are greater, or places himself in a dangerous attitude, which he was not intended to assume, or if he disobeys any reasonable regulation made by the carrier, it should be held that he assumes whatever increased risk of injury is incurred by so doing. This doctrine has been enforced in a variety of cases, and in view of the evidence it was applicable to the case at bar. Hickey v. Railroad Co., 14 Allen, 429; Railroad Co. v. Jones, 95 U. S. 439; Todd v. Railroad Co., 3 Allen, 18, 21; Coleman v. Railroad Co., 114 N. Y. 609, 612, 21 N. E. 1064; Railroad Co. v. Rutherford, 29 Ind. 82, 85; Railroad Co. v. McClurg, 56 Pa. St. 294, 298; Railroad Co. v. Zebe, 33 Pa. St. 318; Bricker v. Railroad Co., 132 Pa. St. 1, 18 Atl. 983; State v. Grand Trunk Ry., 58 Me. 176; De Kay v. Railway Co., 41 Minn. 178, 184, 43 N. W. 182; Railroad Co. v. Ricketts (Ky.) 27 S. W. 860; Turnpike Road v. Cason, 72 Md. 377, 20 Atl. 113; Paterson v. Railroad Co., 85 Ga. 653, 11 S. E. 872; Bon v. Assurance Co., 56 Iowa, 664, 667, 10 N. W. 225; Dun v. Railway Co., 78 Va. 645. We are of opinion, therefore, that, inasmuch as the evidence tended to show that when the plaintiff reached the east opening in the fence he turned west, and went of his own volition for a considerable distance along the right of way towards the burning tank, and by so doing sustained injuries which he otherwise would have avoided, the court should have charged the jury that such conduct on the plaintiff's part prevented him from recovering. If the plaintiff was guilty of the act last described,—if out of curiosity he went to a place other than that designated by the carrier,—he assumed the extra risk thereby incurred, and it should not have been left to the jury to determine whether he thought that the place where he thus went was safe, or whether other prudent persons thought so. A passenger who, of his own volition, has incurred an unnecessary

risk by going, without invitation or other reasonable excuse, to a place where he had no right to go, should not be allowed to excuse his conduct, and hold the carrier liable as a carrier while he is in such exposed position, on the plea that he believed the place to be safe, and that other persons so believed.

The defendant company assigns for error that the trial court wrongfully excluded a stenographic report of the testimony of a witness by the name of Moses R. Dickey, which had been given on a former trial of the case, after the defendant company had shown that the said Dickey was a resident of the state of Ohio, and that the defendant had been unable to procure his attendance at the second trial. The rule appears to be established in Minnesota—where this case was tried—that such testimony is admissible. Minneapolis Mill Co. v. Minneapolis & St. L. Ry. Co., 51 Minn. 304, 53 N. W. 639; King v. McCarthy, 54 Minn. 190, 55 N. W. 960. And the same rule, it seems, prevails in some other jurisdictions. Railway Co. v. Elkins, 39 Neb. 480, 58 N. W. 164, and cases there cited. We can see no substantial objection to the admission of such testimony when, on the first trial, the witness was fully examined and cross-examined, provided, always, that the stenographic report of his testimony is proven to the satisfaction of the trial court to be correct, by the person by whom it was reported, and provided further that the witness is beyond the reach of the process of the court, and his personal attendance cannot be secured. Such testimony, we think, may very properly be accorded the same weight as a deposition duly taken on notice. Because the rule in question is in force in the state where this case was tried, and seems to be a reasonable rule, we should be disposed to hold that the testimony of the witness Dickey on the first trial ought to have been admitted, were it not for the fact that the record shows that the stenographic report of his testimony as offered was incomplete. The witness, it seems, was present when the oil tank exploded, and was himself burned. He was called as a witness by the defendant company to show at what place the plaintiff, Myers, was standing when the explosion occurred; and to point out the position which Myers occupied he referred to certain photographs that were used at the first trial, which aided materially in fixing the exact place where the plaintiff was standing when he was hurt. These photographs, however, were not produced at the second trial in connection with the testimony of the witness, and because they were not produced, and the testimony offered was therefore incomplete, and in a measure unintelligible, we think that no error was committed by the trial court in excluding it.

An exception was also taken by the defendant company to the admission of evidence showing that the salary and fees which the plaintiff received as consul at Victoria amounted, in the aggregate, to about $5,000 per annum. It appeared that his commission as consul had expired shortly before the accident occurred, and it was not shown that he had lost any part of the salary or fees of the office in consequence of his injuries. Under these circumstances we are of opinion that the testimony last referred to ought to have been excluded. The proof of his earning capacity should have been confined

to that business which he ordinarily followed, inasmuch as it was not shown that his injuries had occasioned any loss of salary as a public officer.

On the argument of the case, and in the brief of counsel for the defendant in error, considerable space has been devoted to the discussion of the question whether the errors complained of by the plaintiff in error were properly saved and assigned. With reference to this subject it is sufficient to say that the exceptions which we have considered to the refusal of the defendant's instructions, and to the rejection and admission of testimony, are, in our judgment, saved and assigned in such manner as to satisfy the requirements of our rules. For the reasons indicated, the judgment of the circuit court is reversed, and the case is remanded for a new trial.

GERMAN INS. CO. OF FREEPORT, ILL., v. INDEPENDENT SCHOOL DIST. OF MILFORD, DICKINSON COUNTY, IOWA.

(Circuit Court of Appeals, Eighth Circuit. April 12, 1897.)

No. 860.

1. PRINCIPAL AND AGENT—ADVERSE INTEREST OF AGENT IN CONTRACT—FIRE INSURANCE.
   The rule that an agent who is adversely interested in the subject-matter of a contract cannot bind his principal thereby does not apply where a school board, by vote, authorizes its president to enter into a contract of insurance through an insurance agent who is also a member of the board, as the latter's interest as a school director in the property insured is nominal, and no greater than that of any resident of the school district.
2. SCHOOLS—EVIDENCE OF PROCEEDINGS OF BOARD OF DIRECTORS.
   The minutes of a school board are the best evidence of its proceedings, but where a motion and the vote adopting it are not recorded by the clerk they may be proven by the persons present.

In Error to the Circuit Court of the United States for the Northern District of Iowa.

George F. Henry, for plaintiff in error.
J. W. Cory, for defendant in error.

Before SANBORN and THAYER, Circuit Judges, and LOCHREN, District Judge.

LOCHREN, District Judge. The plaintiff below, an Iowa school-district corporation, recovered judgment against the defendant, a fire insurance company of Illinois, upon an alleged oral contract of insurance, claimed to have been made September 17, 1894, whereby the defendant, through its authorized agent, for the premium of $56.25, then in the hands of such agent, insured the plaintiff's schoolhouse and contents and appurtenant buildings from loss by fire in amounts aggregating $2,500, for the term of five years from October 11, 1894, at noon, when a previous written policy of the defendant company, covering the same schoolhouse, but with some differences as to the other property, would expire. Up to November 2, 1894, when said schoolhouse and all the property so claimed to have been