that this doctrine was too harsh to apply to the operation of such agencies as are in use upon railroads, and that those agencies, and the modes of their use, are of such a nature as impose upon persons or parties using them a high degree of care, not only for the personal safety of passengers and employés, but of the general public. And a more humane rule was declared, that where the servants of the corporation in charge of the operation of trains have knowledge of the exposed condition of the party injured, or the circumstances are such that a reasonably prudent man in the position of those servants would take knowledge of it, the corporation cannot claim exemption from liability for the injury inflicted through negligence of its servants under such circumstances. And, further, in the matter of passing across a railroad, or along its track, at points where no public crossing had been established by law or contracted for by the parties, and where no express invitation had been extended to the public or to individuals for such use, that the notorious, frequent, and continued use thereof for such purpose by individuals or the general public, known to the officers and servants of the company, and acquiesced in by them without objection, would imply such a license as would relieve parties so using it from the charge of being trespassers, and would charge the corporation with the duty of expecting such persons to be on its track, and to use reasonable care to avoid inflicting an injury on them. Some unguarded expressions occur in a number of the more recently reported decisions, and a few cases in the courts of some of the states appear to support the contention of the defendant in this case, and to sustain the action of the circuit court in its ruling on the demurrer. Most of the cases which we have examined differed from this case, in that the whole case was before the appellate court, and the questions considered arose on the consideration of the whole proof in courts sitting as courts of appeal, and passing upon the evidence, or upon instructions given or refused, on states of fact fully shown by bills of exception. We are not called upon to say that the facts pleaded with reference to the use of the covered trestle or bridge over Rhodes street constituted an implied license to the public to use that bridge; nor are we called upon to say that the defendant, in the matter of handling the oil-tank car as charged in the pleadings, was or was not guilty of negligence; nor are we called upon to say that the children were or were not guilty of contributory negligence. All that we are called upon to decide, and all that we do pass on, is whether such a case is made by the pleadings of the plaintiff as required the defendant to answer, and the court to submit issues to the jury.

What we have already said clearly indicates that, in our view, the question of whether the use of the trestle had been such as to constitute an implied license to the public to pass over it, and relieve the children of the charge of being trespassers, should have been submitted to the jury. This view, we think, is supported by the great weight of recent decisions. The cases are so numerous that to review them would be tedious and unprofitable. We cite only a few, which, with those to which they refer, sufficiently show the present state of the authorities: Bennett v. Railroad Co., 102 U. S. 577; Fletcher v.

Railroad Co. (Nov. 1, 1897; not yet officially reported) 18 Sup. Ct. 35; Cahill v. Railway Co., 46 U. S. App. 85, 20 C. C. A. 184, and 74 Fed. 285; Felton v. Aubrey, 43 U. S. App. 278, 20 C. C. A. 436, and 74 Fed. 350; Railway Co. v. Watkins, 88 Tex. 20, 29 S. W. 232; Railway Co. v. Crosnoe, 72 Tex. 79, 10 S. W. 342; Railway Co. v. Boozer, 70 Tex. 530, 8 S. W. 119; Railroad Co. v. Hewitt, 67 Tex. 473, 3 S. W. 705; Roth v. Depot Co. (Wash.) 43 Pac. 641; Barry v. Railroad Co., 92 N. Y. 289; Taylor v. Canal Co., 113 Pa. St. 162, 8 Atl. 43; Chenery v. Railroad Co., 160 Mass. 211, 35 N. E. 554.

The elementary principle, fundamental in all civilized life, to test that degree of care, the absence of the reasonable use of which constitutes culpable negligence, is that a party must so use his own, and so conduct himself, as he would have a right to expect that another, honest, reasonably prudent, and humane, would do under similar circumstances. Subject to certain well-settled limitations, the fit adjustment of this principle to the infinitely varying conditions of particular cases can best be made by the jury. It is clear to us that if the defendant was negligent in the handling of the oil-tank car in question, in its yards at the junction of Fair street, by which the car escaped from control, and rushed down the track at a great speed, and across the bridge on which the children were, and inflicted the injury of which they died, the cause was direct and proximate, and the defendant could not be relieved on the ground that the cause was remote, and the effect not to have been expected. There is in the declaration no suggestion of any act upon the part of the children that would constitute negligence, other than the mere fact of their being run down and killed by a blind car coming on them from the rear at a fearfully excessive rate of speed, without any signal or note of warning other than the noise that the movement of a single car would make, which, even to ears of adult experience, must have been inaudible at the given time and place. As already suggested, the test to be applied to a given state of facts, either by court or jury, to determine whether they constitute negligence, is our common knowledge of what would be the conduct of a reasonably prudent person of like age and experience in like circumstances. The same degree of care is not expected of children of the age of 7 and 11 years that could reasonably be exacted of mature persons, having the experience which comes as all experience does with maturing years. This circumstance of age, however, like all the other circumstances of the situation, is an element of proof to be considered by the jury in finding the presence or absence of contributory negligence. We conclude, therefore, that the circuit court erred in sustaining the general demurrer to plaintiff's declaration, for which error its judgment is reversed, and the cause is remanded to that court, with directions to overrule the demurrer and award the plaintiff a venire. Reversed and remanded.

OUSELEY v. LEHIGH VALLEY TRUST & SAFE-DEPOSIT CO.

(Circuit Court, E. D. Pennsylvania. November 23, 1897.)

No. 62.

1. FOREIGN JUDGMENTS—VALIDITY.
A default judgment between citizens of a foreign country, rendered by a court of that country having general jurisdiction and jurisdiction of the subject-matter, is valid and enforceable here, though the defendants, being out of that country at the time, were not personally served.

2. SAME—SUIT ON JUDGMENT—PARTIES.
Quære: Whether the assignee of a foreign judgment can sue thereon in his own name.

This was an action of assumpsit, brought by Frederick Arthur Gore Ouseley, in his own name, against the Lehigh Valley Trust & Safe-Deposit Company, as executor of Amable B. Bonneville, deceased. The statement of claim set out the following facts:

On July 26, 1876, Samuel M. Weeks, a subject of the queen of Great Britain, and a resident of Nova Scotia, recovered judgment against Amable B. Bonneville and another in the supreme court of the province of Nova Scotia, amounting, with costs, to $2,242.27. That court was then a court of record, duly constituted, with general jurisdiction, and jurisdiction of the subject-matter of that suit. The defendants therein in 1878 and in 1882 acknowledged the validity and binding force of that judgment, and promised to pay it, but only $190 has been received on account thereof. Amable B. Bonneville died on November 8, 1895, residing at Allentown, Pa. The corporation defendant was appointed his executor, and is in funds to pay this judgment. Samuel M. Weeks has assigned his rights under this judgment to the plaintiff, who is also a subject of the queen of Great Britain. Attached to this statement of claim is a copy of the record of the original cause. From this it appears that the defendants were residing in New York, and were not personally served therein within the territorial jurisdiction of the Nova Scotia court, and that the original judgment was obtained by default.

To this statement of claim a demurrer was filed by defendant, the grounds of which, so far as insisted on at the argument, are set out in the opinion.

Charles A. Chase, for plaintiff.
Edward Harvey, for defendant.

DALLAS, Circuit Judge. Four causes of demurrer are assigned by the defendant to the plaintiff's statement of his cause of action, but these need not be severally considered, inasmuch as in the brief presented on behalf of the defendant it is said that the questions intended to be raised by the demurrer are (1) whether this action can be maintained notwithstanding the fact that it appears that the judgment of the Canadian court now sued upon was obtained without service on the defendants, and without appearance by them; and (2) whether, aside from the first question, the plaintiff, as assignee of that judgment, can maintain an action thereon in his own name.

1. The first point is, in my opinion, not well taken. It need not be questioned—it is, I think, unquestionable—that, if the defendants had been then citizens of the United States, the judgment, which was entered by the Canadian court without actual notice to or appearance by them, of whatever validity there against property of the de-