

E A S Y L E S S O N S I N L A W .

THE DOCTRINE OF ASSUMED RISK.

By Clarence S. Darrow.

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If you happen down on the lower end of Clark street, you will likely see Tony Salvador. If you conclude to visit Clark Street you had better go on Saturday night. It is more interesting than the boulevards or any other part of Chicago. Here you will find lodging houses, cheap hotels, second hand clothing store, pawn shops, Chinese tea stores with tall vases in the windows, plenty of saloons and dance houses, churches and missions, opium joints and shooting galleries.

Here you will see Americans, Irishmen, Germans, Frenchmen, Italians, negroes, Chinamen, soldiers of the Salvation Army, policemen and abandoned women, not women who are abandoned, but women who have been abandoned by the world. I like Clark street. If the whole world turns you out you can still live on Clark street.

You will know Tony Salvador, because his legs are not mates. One of them is made of ~~flash~~ ^{flash} and the other is made of wood. There are people with wooden legs that look almost as good as new. There is one doctor in Chicago that has such a fine wooden leg that he goes into court for the railroad companies and tells the jury how well one can get along on a wooden leg. But Tony's leg is not that kind. It is simply a round stick with a socket in the top and into this socket he slips his old stump and straps them together and then limps away.

You will probably see him pushing a glass cart along the

street. The cart has a gasoline stove and over this stove he pops corn and sells it to the throng on Clark street. He chooses Clark street because, although most of the people that he meets are poor, still they are of a liberal, reckless sort, and had sooner give their money to one-legged Tony than to put it in the bank.

Sometimes on Derby Day or Chicago Day when there is a crowd in town Tony rents a faded blue suit of clothes with brass buttons and goes out on State street and begs. It is strange how much easier it is to get money when your leg has been taken off by a cannon ball than when it has been crushed by a car wheel. This is because people are patriotic.

Of course Tony has a family; all poor people have children; he keeps them in a basement on Clark street next to an opium joint; they play in the streets by day and on hot summer nights they go up on the sidewalk and watch the throng until they fall asleep. Perhaps the boys will grow up and be hanged; the girls will most likely always stay on Clark street. Tony goes out on the street with his cart every night except when it snows. One day he went out in a snow storm and fell down and broke his wooden leg and it had to be fixed with nails and iron rings-but this story is about his other leg, the one he lost some years ago.

Tony was born in the most beautiful spot on the most beautiful lake in the world. At Belgio on Lake Como. When he was a child he used to sit on the high promontory and look out at the clear, deep, blue water below him and the soft blue sky above and the great silent mountains with the snow capped peaks, across the lake. He did not know how beautiful it was until years after when he lived in Chicago. Virgil lived in the City of Como at the other end of the lake, but this was 2,000

years before Tony's day. In Italy Tony's mother had a little garden where she raised vegetables and took them with Tony to the little brick market square in Belagio, where she sold them to the poor who came to buy. But as Tony grew older he became ambitious and wanted something more than the poor straw-covered hut, the little garden, the daily visit to the market square and the few centimes that this small traffic brought. An agent of a transportation company one day found Tony and told him of America, where dollars were as plentiful as livres and five times as big. The agent agreed to give him a ticket and get the pay from the railroad company after he got a job in America. So he bid his mother good-bye, while she clung to him and moaned in the hysterical manner of the very poor. Then he went to Genoa and sailed away. He stood on the steerage deck and looked at the vine-clad hills and the terraced flower gardens of Italy until they were out of sight.

Tony landed in New York, passed through the quarantine and Castle Garden and then the agent of the steamship company took him in hand. He joined a gang of his fellow country-men who were building a railroad out West. His countrymen did not own the road; they simply stood in a gravel bank and shoveled dirt from morning until night. The men who owned the road lived in New York and London and Paris and spent their time at the seashore or anywhere else they wished to go. After passing from sand bank to sand bank, he finally drifted to Chicago, where he joined the Italian colony, got naturalized and married and commenced to raise a family and to vote. In the course of time Tony got a good steady job in the railroad yards along the river and began to forget the shores of Italy, with its vines and roses and its eternal soft blue sky. Tony never was an educated man; indeed he never had a great amount of brains. He never learned

to speak English except a few broken sentences that he needed every day, but even in Italian he was not learned or bright. He knew how to shovel sand, to turn a switch, to get out of the way of a moving train, to obey the foreman's orders and to do what the rich people told him; most poor people do this last, especially at election time.

He had a very simple, easy job. The yards were about a quarter of a mile wide and a mile or two in length; the tracks were laid so closely side by side that he could hardly stand safely between them. A half a dozen roads ran their trains and switched their cars and engines along the tracks, and from morning until night the yard was alive with trains and cars and engines moving up and down. No one came to the yards except the railroad men whose duty called them there. Somewhere about the middle of the yards was an elaborate system of switches which made it possible for a train north of the switch to run south on track number one and then after passing a switching tower gradually turn off from track to track until it ran away from the city on track eight or ten or twelve or any other that the yard master chanced to choose. This switch was called a "puzzle switch" and indeed it was a puzzle to almost every one except the few who had managed to master the intricate design. The switch was worked by a man in the tower who commanded a view of the yards and every one in them and who knew from signals on which track to send the flying cars. Tony had nothing to do with the switch; its mechanism was far beyond the limited horizon of his mind. Tony's work was of the simplest kind; he was furnished with a little stick about twelve inches long, a half an inch wide and an eighth of an inch thick, and all he had to do was to get down on his knees and clean the snow and dirt out from between the various switches so that the tracks

could be joined together by the man in the tower. For that he got \$40 a month, which was a good price where nothing but muscle was needed and not much of that. The only brains that he could use for this job were enough to dodge a moving train. Of course any one who was careful could keep off the track when an engine was about to pass, but still if you had a boy and knew that he was living out there in a wilderness of railroad tracks alive with moving cars and that day after day he must dodge these trains and that a miss-step or a forgetful moment or the blunder of some one else meant certain death you might not sleep very soundly at night. The sons of railroad presidents and general managers and general counsel never take these jobs.

Well, Tony used to walk around the tracks and inspect the switches and carry his little stick in his hand. After a year or so he felt perfectly at home and had learned to calculate about where a train would land after it passed the tower of the "puzzle switch". To be sure, he had narrowly escaped death a number of times-but he had escaped-and he never thought of getting a safer job; he would not have known anything better than this to do, and besides if he had thrown up the job some one else would have come to take his place. He got along pretty well in the Summer time but in the Winter, when the snow fell fast and the wind blew hard, it was not an easy job. His clothes were none too warm, and his hands were often numb--and the hours dragged very wearily as he waded around the yards holding his little stick in his purple hand. He was obliged to go to work in the morning before daylight and work until long after dark, and even Tony often thought he earned every cent that he got. Perhaps you would not have stood it; you might have purposely slipped and fell under the great wheels of a moving train and been done with it

at once; but Tony never thought of this; there were several hungry little Italians that he had to feed, and although he said nothing about it and really thought nothing about it he loved these little waifs who were growing up on the street. Then again you must not think that life was as hard to Tony as it seems to you. God is very merciful; He does not temper the winds to the shorn lambs, but He tempers the shorn lambs to the winds. But even Tony thought he ought to get more pay in Winter than in Summer, for the work was harder and the wear and tear greater, but in fact he got less in Winter time. The wages of the poor are not paid according to the amount of life the master gets, but according to the number of lives that are offered for the job, and these were more in Winter time.

Well, one morning Tony came down to work while it was still dark. The wind was blowing and the snow was drifting fast. He took his stick and went down the yards and commenced working at the tracks. The towerman was already there; in fact he had been there all the time. Tony knelt down on the ground, reached out his hand and commenced picking the snow out from between the tracks. As he knelt on the ground one leg extended back over another track. He glanced up the track and beyond the tower and at the other side of the yards he saw the glare of a headlight from an engine standing still. Tony was so used to engines that this gave him no alarm. He thought that if it came down it would pass upon another track, and besides he would hear it if it came. If you ever work in a yard you will learn that you cannot give all of your time to dodging trains; you must do some work and must depend upon your eyes and ears and also upon your fellows who work with you.

The grade of the yard was toward the south and the engine was

north of where Tony was cleaning out the switch. This particular engine had no cars attached and was going south to bring some cars of coal up into the yards. The engine stopped a few moments before it reached the "puzzle switch"; then it got the signal, released the brakes and dropped gently down beyond the tower. No steam was needed to move the engine down the yards and the snow muffled the sound of the wheels; both the engineer and the towerman might have seen Tony's little red lantern down at the switch, but if they looked they knew that it was only a trackman whose business it was to get out of the way. No warning was given as the engine crept along. In fact there was no need of a warning; a man should look out for himself. Well, Tony was leaning over the track, with his left leg stretched out behind. He heard no sound. The morning was so raw and cold that his hands and face were numb, and as he leaned over the track in the great, cold, horrible yards, he had a vision of the promontory where he used to sit when a boy. Once more he saw that wonderful blue Italian sky, that enchanting sweep of clear, blue water and the high, green, snow-capped mountains rising from its edge-and then a mighty mass of iron seemed to fall upon his leg. The engine passed over him. No one even saw him, but he shouted until the man in the watch tower heard his cry.

Tony was taken to the hospital; his mangled leg was cut away. He took a vacation of a couple of months and then went back home and he brought suit against the company to recover damages for his lost leg. Tony and his family lived a year or two borrowing money and running in debt in the expectation of the great fortune that his lawyer said he could get. Tony was to have 60 per cent of it for himself-he did not know exactly how much that meant, but he knew that it was a great deal.

Finally the case came off. Tony's lawyer claimed that the company was negligent because the towerman should have seen Tony's lantern and not sent the engine down upon him while he was kneeling over the switch; also that the engineer should have warned him of the approaching engine and that the tracks were too near together and that the yard was a dangerous and unsafe place for a trackman to work. The Judge refused to allow the lawyer to prove anything about Italy or the transportation company or Tony's family or how cold it was or his vision of Lake Como. He said that these had nothing to do with the case, as doubtless they had not. The Judge told the jury that if Tony did not know better than to work in such a dangerous place he assumed the risk and they must return a verdict for the defendant, which of course they did.

Tony did not quite understand what it all meant. In fact he was nervous and uneasy all through the case, much more so than down on the network of tracks where the engines were moving around him. He could not seem to make the Judge understand what he said. The Judge was a very great man, but Tony could comprehend the greatness of the Judge better than the Judge seemed to understand the simplicity of Tony.

It has been a number of years since Tony lost his leg and his case, and as he shoves his popcorn wagon up and down Clark street he wonders if he is not about as well off with his wooden leg as when he was out on the tracks picking snow away from the switch with his little stick.