

be secured against rapidly moving trains, by fencing or some similar protection; and such fencing must, to be any protection at all, cross the highway at the crossing and so retain the travelling public in a place of safety while a train is passing or immediately about to pass.

There is, of course, another view. By the new section 259, the Legislature clearly intended a fence of some kind to be maintained, and as clearly intended that if no fence was maintained at these crossings then the speed should not exceed six miles an hour; but it has perhaps failed to prescribe the kind of fence which shall be built, because it is clear that a fence leaving the crossing itself entirely open, such as that apparently prescribed by the new sec. 197, could not possibly meet the case of protecting the crossing, and no other fence is specifically prescribed, so far as I can find, in the railway legislation of the country. Now, in such a condition of things, and from this point of view, the railway company has one of two courses open. It may at such crossings station a watchman or maintain a reasonable fence sufficient for the purpose, or it may reduce its speed to the permitted maximum of six miles an hour. The defendants do not choose to adopt either course. They say, in effect, the sections in question, as they now stand in the Railway Act, are not at all intended for the protection of the public, but solely in the interests and for the protection of the railway companies; and that they, the railway companies, are subject only to the orders and directions of the Railway Committee as to such crossings as the one in question. But not even the Railway Committee has power to authorize a speed exceeding six miles an hour, unless the track is "properly fenced:" see sec. 10 of the Railway Act, 1888; the retention of the latter words, "properly fenced," aiding, I think, very materially in the conclusion which I have reached, namely, that unless the track, including the crossing, is properly fenced or otherwise protected so as to efficiently warn or bar the traveller while a train is crossing, or immediately about to cross, the maximum speed at which a train may cross in thickly peopled portions of cities, towns, and villages, is six miles an hour.

So that we have in the present case an undisputed finding by the jury that the train in question was travelling at what, if I am right, was the unlawful and highly dangerous speed of 20 miles an hour over a main street in an incorporated town, and that the injury complained of was caused by this excessive speed, coupled with the absence of proper protection at the crossing, and without negligence on the plaintiff's part. I am of the opinion that there was evidence, I am inclined to