

answers must be read in the light of the jury's previous answers, and the discussion which preceded their final deliverance. So treated, the case is narrowed down to this, that both the plaintiff and the motorman were guilty of negligence—the plaintiff “in not seeing he had sufficient time to cross to the north side of the tracks in safety” (Q. 4), and the motorman “by not applying the brakes when he first noticed the plaintiff heading across the tracks” (Q. 2); that the plaintiff could, by the exercise of reasonable care, have avoided the accident (Q. 3). The answers to the other questions were struck out by the jury themselves before delivering their final answers. This was after they had told the trial Judge that, “according to the evidence, he (the motorman) had not a chance to do anything but what he did.”

The remark of the foreman to the trial Judge, after handing in the last answers, seems also to me to put it beyond doubt. The trial Judge, after reading the answers, says: “The only change is taking out the answer to 7. What you say in effect is, that both these people were to blame, and that the motorman, after he saw the plaintiff was in danger, could not have stopped the car. That is the effect of it?” And the foreman answered “Yes.”

From the above it is clear that there was no negligence at or just before the impact, and that the jury had distinguished between the time when the motorman saw the plaintiff heading across the track, when he could have applied the brakes, and the time when, as they say, he hadn't a chance to do anything but what he did.

The trial Judge had in his charge asked them specifically: “Did the motorman see the plaintiff in time to have stopped his car and prevented the accident? Did he delay and was he negligent, if he did delay, in sounding his gong or in applying his brakes and trying to stop the car the moment he saw the plaintiff about to cross?” And later he said: “Assuming you find the motorman was negligent . . . then after he saw, or ought to have seen, that the plaintiff was crossing the track, and that there would be a collision unless one or other of them stopped, was the motorman guilty of negligence in not doing what it was in his power to do, if there was anything in his power to do, to have stopped the car and prevented the collision?”

To my mind, the effect of the answers of the jury was to hold the motorman guilty of the negligence mentioned in the