

of the train were the caboose and a box car, which were to be set up the straight track No. 3; the remainder of the train then to be switched around west of the Bolt Works.

This operation seems to have begun with the westerly car, about 50 feet east of Windermere avenue. The yard-helper, Rowan, got up on the foremost car, the box car west of the caboose, and saw the deceased walking "right in the centre between the two tracks on the eight feet" between tracks Nos. 2 and 3. The bell was continuously ringing, but no whistle was blown. There was nothing to indicate any danger to the deceased, as he would be well out of the way of the train. A train was coming from the west toward the locus on track No. 1.

When the box car on the track 3 was about a car length east of the deceased, Rowan saw him step to the north over upon track 3. Rowan "shouted and gave a frantic stop signal" to the engineer. The hand brakes on the box car were on the east end, and Rowan did not have time to apply them—he was taken up with trying to warn the deceased. The cars were going west about 4 or 5 miles per hour, and the yard-helper could not have stopped them in a car length, as he thinks. It seems probable that the train passing east on track No. 1 prevented the deceased hearing the bell, the noise of the west-going train, or the shouts of the yard-helper. He did not turn round to see if any train was approaching. The engineer applied the brakes as soon as he got the signal, but the cars did not stop in time, and the box car and short caboose ran over and killed the unfortunate man. The engineer, called by the plaintiff, says he could not have stopped any quicker.

At the close of the plaintiff's case, her counsel mentioned the several grounds of negligence upon which he relied, and the learned trial Judge charged the jury with great care upon the various allegations of negligence: (1) that Rowan should have warned the deceased; (2) "As to the whistle, there is no dispute . . . on the facts, and, if you attribute the happening of the accident to the omission to whistle, you will say so, and I will deal with the question of law or the Court will deal with that afterwards;" (3) "Then it is said that the train was not stopped in time;" (4) "It is said there ought to have been a brake at the rear of the car" (this is explained later as being the west end of the box car); (5) "That Rowan ought to have rushed immediately to the rear of the car and have applied the rear brake" (*i.e.*, in this case, as explained later, the east end of the box car).