

saw the car, and before he could do anything they were struck.

The motorman said that he saw the plaintiff when the car was about 70 or 80 feet from the centre of the crossing, and he thought that the plaintiff did not realize what was going on. The motorman did not then prepare to stop the car, but contented himself with taking up some of the slack of the brake, and it was not until he was within 10 feet of the horses that he reversed, too late to avert the collision.

There was a conflict as to the distance the plaintiff and his waggon were carried after the collision. The jury evidently credited the witnesses who swore that the car went across McDougall street and some distance beyond, before it came to a stop, thus shewing that the speed must have been much greater than the motorman and the conductor put it at.

If the motorman had had the car under control, there is very little reason to doubt, that when he saw the plaintiff and became aware that he did not realize the situation he could have stopped in time to avert the collision.

The jury might well have thought that the plaintiff should have exercised more caution when approaching this dangerous crossing, but there is evidence upon which they could reasonably find as they did, and it was for them to say. But even if they had taken an adverse view to the plaintiff upon that question, they could well find as they did that the motorman had sufficient time to avoid the collision after he became aware of the plaintiff's intention to cross and that he did not appear to realize the situation.

The appeal must be dismissed with costs.

HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, and HON. MR. JUSTICE MAGEE, concurred.

HON. MR. JUSTICE MEREDITH:—No reasonable man could find that the plaintiff was not guilty of negligence; he looked when looking was useless; but he failed entirely to take any such precaution when, if taken, it should have saved altogether this lamentable accident.

But the jury have found that notwithstanding such negligence the defendants might, exercising ordinary care, have saved the situation; and, therefore, if there be any reasonable evidence to support that finding, the verdict must stand.