

"7. Could the motorman and the deceased, each of them, up to the moment of collision, have prevented the accident by the use of reasonable care; in other words, was the negligence of the deceased the contributing act up to the very moment of the accident? A. Ten say no, two say yes,

"8. If the Court should, on your answers, think the plaintiff entitled to damages, what sum do you assess as damages, distributing it: (a) to the mother of the deceased, aged 71 years: (b) to the wife, aged 32 years; (c) to the daughter, aged 8 years? A. Ten for \$4,000."

The learned trial Judge, in explaining question 7 to the jury, said: "In other words, was the negligence of the deceased the contributing act up to the very moment of the accident? . . . Did, in fact, the deceased's act contribute up to the very moment of the accident? . . . Did he become aware that the car was approaching, and was he able to avoid the danger? That is the sense in which that question is put. . . . Now, you will understand the sense in which the question is launched . . . It is true that, physically, as far as his actions went, he did contribute to it up to the last moment, but did he do it in that negligent sense that he was aware that the car was approaching, and was he able to avoid the danger?"

There is, I think, no evidence to support the jury's answer to question 6, to the effect that the accident could have been averted after the deceased's negligence in stepping in front of the car, by the motorman then "putting on the brakes and having the car under proper control." The evidence of the motorman—that, when the deceased stepped off the kerb at the south side of the street, he threw off the power; that it remained off from that time until the reverse power was applied, when the car was brought to a stop; that, as soon as he supposed that the deceased contemplated stepping upon the track, he reversed the power, a method more effective in stopping the car than applying the brakes; and that he brought the car to a stop within less than half of its length—is uncontradicted and its correctness not challenged, and is in material parts corroborated by witnesses who spoke as to the movement of the car. Nor was there any attempt to shew that, at this stage, anything could have been done to prevent the accident happening. The motorman was, I think, justified up to a certain point in assuming that the deceased would exercise reasonable care; and nothing is shewn that would suggest a different conclusion until the deceased actually stepped upon the track.

As to the answers to questions 3 and 4, their evident mean-