Several witnesses were called who testified that they did not hear any sound of the gong of the car; but not one of them was asked, or ventured an opinion on, the question whether he would have heard it if it had rung, while some of them volunteered a statement of their inattention. The driver testified positively that he did sound the gong. And a witness, a passenger in the car, testified that another passenger stood up in the car and shouted, "Why don't you look where you are going?" immediately before the accident. It was conceded that the speed of the car was not excessive.

The learned Chief Justice was of opinion that, in all the circumstances of the case, it could not be said that reasonable men, acting in good faith, could find a verdict against the defendants.

There is a well-defined and unmistakable boundary between the province of the Court and that of the jury in all such cases as this; and the interests of justice require to-day, just as they did in the days of Erle, C.J.—see Cotton v. Wood (1860), 8 C.B.N.S. 568—that the right and duty of the Courts to determine whether there is evidence upon which reasonable men could find, before letting any case go to a jury, should be always exercised—that no surrender or invasion of either province should be permitted. Reasonableness—whether it is called a question of law or fact—such as this "belongeth to the knowledge of the law, and is therefore to be decided by the Justices."

The appeal should be dismissed.

RIDDELL, J., concurred.

MASTEN, J., also concurred, giving reasons in writing.

LENNOX, J., read a dissenting judgment.

Appeal dismissed; LENNOX, J., *dissenting.*

HIGH COURT DIVISION.

BRITTON, J., IN CHAMBERS. DECEMBER 16TH, 1915.

RE ELLIOTT v. McLENNAN.

Certiorari—Application for Removal of Examination for Discovery in County Court Action—Judgment—Improper Evidence—Right of Appeal—Exclusion of Remedy by Certiorari.

Motion by J. B. Mackenzie, formerly solicitor for the plaintiff in an action in the County Court of the County of York,