

being fenced, was not under any obligation to protect the public, and that it could not be held for damages except such as resulted from a wilful act.

Much force could be given to the learned counsel's argument, and much assistance would be found in the high authority cited in the defendant's factum, but, unfortunately, in my opinion, the force of the argument is absolutely destroyed by the condition brought about and created by the defendant itself for its profit and gain. It brought hundreds of men to the north platform. It allowed them to alight, and it allowed them to cross the double track to get to their work, there was no other means by which they could get to their work.

It is true, that the plaintiff on the occasion in question had not alighted from any car, but it is equally true he was in the act of doing what probably hundreds of the men were actually doing at the time of the accident, viz: crossing these tracks to get to his work.

It would seem to be established that the defendant's car was going at an excessive rate of speed.

I should say that under the existing conditions brought about by the defendant company, the obligation to use reasonable care and skill to avoid accident existed. I am opinion that that obligation existed in the same manner as if these men, or this man, was crossing a public street, over which the company defendant had a right to run its cars. The plaintiff had a right, so far as the defendant was concerned, to cross that track, he had been invited to do so by the defendant itself.

The defendant urged that no negligence was established. I am not disposed to interfere with the finding of the learn-