

ing and other tracks of the Vermont Central Railway, that the appellant company had an engine house a short distance from where the respondent was injured, and had from the Central Vermont Railway Company the privilege of using one of their tracks to it. On the occasion in question the driver of one of the locomotives of the appellants proceeded with one of their locomotives in daylight from the engine house toward the station. The respondent was then going from the office of the Central Vermont Company to a warehouse on the other side of the tracks, and distant from one to two hundred yards. Whilst on the same track that the locomotive was using, and with his back toward the point from which the locomotive was coming, he was struck and injured. Contradictory statements as to whether or not he was then on the regular street crossing were made by several witnesses on each side, but the jury did not specifically decide that contested point.

On the question submitted to the jury, "Did the engineer, employees and servants of the defendants so engaged in running the said locomotive * * * over the said line of railway, and while the same was crossing and passing along the said public highway, give due notice of danger by ringing the bell or sounding the whistle of the locomotive, or both, answered "No—sufficient warning was not given." If such was the case, there was then negligence, for the consequences of which the appellants are answerable. It is, however, contended the weight of the evidence was the other way, and that, therefore, the verdict should be set aside. It is a question, however, of the credibility of witnesses, and unless we see that the finding of the jury was the result of improper bias or a clear mistake of the rules of evidence, I do not see how any court could properly set aside such finding. I have said that, in my opinion, the case was properly submitted to the jury. Lord Hatherly, in the case before cited, at p. 1168 says: "I will in the first place state my concurrence with Mr. Justice Barry's opinion in the Court below, viz.: 'When once a plaintiff has adduced such evidence as, 'if uncontradicted, would justify and sustain a verdict, no amount of contradictory evidence will justify the withdrawal of the case from the jury.'" Applying that doctrine to the present case, how can it be contended that there was not sufficient evidence on the part of the respondent, if uncontradicted, to justify and sustain the verdict herein? Then arises the