

time of stalling the street-car was more than 500 feet down the track; that the car came on and struck the automobile before Willox could get his engine started.

The defendants' evidence was that the accident occurred at night; that the head-lights of the automobile shone into the face of their motorman and prevented him from seeing that the automobile was on his course until he was so close to it that it was impossible for him to stop the street-car. The defendants also said that the plaintiffs were guilty of contributory negligence in not giving the motorman warning of their danger.

The plaintiffs replied that the position of the automobile was such that its head-lights could not have blinded the motorman; that Willox was fully occupied in an endeavour to start his automobile; and that he acted reasonably in not leaving his car for the purpose of warning those in charge of the approaching street-car.

The defendants moved for a nonsuit, upon the ground that there was no evidence of negligence; upon this the County Court Judge reserved judgment until after he had submitted the case to the jury.

Questions were put to the jury which they answered by finding that the accident was caused by the defendants' negligence, in that the defendants "did not apply the means to stop soon enough;" and that there was no contributory negligence; they assessed the damages at \$225 for the plaintiff Harvey Willox, and found that the plaintiff Florence Willox was entitled to no damages.

The County Court Judge dismissed the action upon the ground that there was no evidence of any negligence on the part of the motorman.

The County Court Judge appeared to have accepted the statement of the motorman as settling the issue of negligence or no negligence. He erroneously assumed that the jury were not entitled to pass upon the credibility of the motorman or to consider the surrounding circumstances as affording any evidence of negligence or grounds for believing or disbelieving the motorman. The track was straight, the street-car had a powerful search-light, it was more than 500 feet from the automobile when the stalling occurred. These circumstances afforded some evidence that the motorman could have seen the automobile before the moment at which he said he saw it; that he should have put the street-car under absolute control before he did; and that his failure to do this was negligence and the proximate cause of the accident. The jury were not bound to accept the motorman's story; they were entitled to reject it and draw their own inferences and conclusions as to what he should have done.