

Nothing, of course, is better settled; but it is perhaps advisable to emphasise the circumstance that grounds upon which a jury may proceed need not be such as will stand the test of a rigorous application of the canons of scientific inference. In the circumstances proved might a reasonable man conclude that the defendants' failure of duty was the cause of the accident? That is the question.

Nobody suggested that given the absence of the signal there is anything in itself unlikely in either of the hypotheses suggested. Is there any other equally probable explanation suggested by the evidence? We may eliminate a rash attempt to hurry across the front of a near approaching train. The evidence is that Toll was a sober man and an exceptionally careful driver. Then there is the suggestion that the deceased persons reached the track in ample time to cross but that the horses balked at the sight of a derrick lying on the side of the road and that this delay brought about the disaster. The suggestion must, I think, be rejected for this reason: The position of the derrick is not fixed with any certainty. The utmost that can be said is that it was observable from the track and that on some occasions it has caused horses to swerve when passing over the rails in daylight. There was no evidence requiring the jury to take the view and they may very well have rejected the view that it would be sufficiently distinguishable to affect horses crossing the track at night. It had been exposed to the weather for six months, was unpainted, and probably at that season of the year covered with snow. It was for the jury to weigh the probability of such an object so affecting the horses as to make it impossible for the passengers to extricate themselves in time to escape the train—assuming as the jury did doubtless assume and as they were justified on the evidence in assuming—that they were proceeding carefully and prudently past a dangerous place. This explanation indeed involves the assumption of an attempt by the driver to cross the line without leaving himself sufficient margin of time to get his horses under control in the event of any unforeseen misadventure such as that suggested. The jury were entitled to think and probably did think such an assumption not consistent with the character of the driver as exhibited by the testimony. The jury in a word may very well have thought that assuming careful driving (and rejecting the hypothesis of the driver being misled by the absence of the statutory signals), there was no likelihood that the object