

3. Could the deceased, by the exercise of reasonable care, have avoided the accident? A. No.

4. Damages? \$1,000."

Upon the case, with the answers to the jury to questions 1 and 2, I am of opinion that the plaintiff is not entitled to judgment.

As to light on leading car, there is no duty cast upon a railway company to have a light upon a leading car.

Secs. 275 and 276 are not applicable to this case.

Sec. 275. No train shall pass in, or through, any thickly peopled portion of any town or village at a greater speed than 10 miles an hour, unless, etc. . . .

The place where this accident happened was not a thickly peopled portion of any city, town or village.

Sec. 276. Whenever, in any city, town or village, any train is passing over or along a highway at rail level, and is not headed by an engine, moving forward in the ordinary manner, the company shall station on that part of the train, or of the tender, if that is in front, which is then foremost, a person who shall warn persons standing on, or crossing, or about to cross, the track of such railway.

This accident did not occur at a crossing. The deceased was not standing on, or crossing, or about to cross, the track of the railway, and there was a man on the foremost car. There was a light—a small light. If light necessary, in the absence of statute or rule in a case like the present, a small light, like that of the ordinary lantern, should be reasonably sufficient on a train moving towards a person walking between the rails, to warn such person of the train's approach. The jury, in answering, said the defendants did not take "sufficient precaution, when approaching the boarding cars." Apart from the light, it was not suggested what should have been done, the not doing of which was negligence. Apart from the questions submitted and the answers, I am of opinion that the defendants should succeed upon their motion for dismissal of the action. Upon the undisputed evidence, the action should be dismissed.

The deceased, and those with him, had been working for months near this track, on which trains were running. The deceased took the dangerous road between the rails, instead of the safe way alongside. The deceased was a trespasser in using the railway track as a foot path.