

very far coming that distance;" and two witnesses, both trainmen, and one, the engineer of the train on which the plaintiff was employed, testified that immediately after the accident the plaintiff said that he saw the train coming, but mistook the place where he was standing, thinking there was a track between him and the west-bound line on which the oncoming train was; that is that his own mistake, not any want of warning, caused his injury. The most that he would testify to, opposed to this, was that he had no recollection of saying it, and that if he did it was untrue; so that I cannot think there was any reasonable evidence that the accident was caused by the speed of, or any want of warning from, the train by which he was struck. His statement at the time is the only reasonable one of the cause of the accident, having regard to the fact that he was an experienced brakeman, with a knowledge of the yard, and of the movement of trains at the time, especially of the incoming, about that time, of the fast train by which he was struck; in the noise of its oncoming, after signaling its approach, and in the glare of the head-light of the engine.

I would allow the appeal and dismiss the action.

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