

That position was untenable. There was no evidence that she was either the owner or the driver of the car; but there was positive evidence that her husband was both the owner and the driver.

It did not necessarily follow from the evidence that the defendants' motorman, in the circumstance which arose at the time, had reason to believe, until it was too late to avoid the collision, that Hoffman was about to get into a place of danger, or that, when the motorman became aware or should have become aware that danger to the plaintiffs was imminent, it was the increased speed that then made any reasonable attempt to stop before the collision ineffectual or impossible. Taking the evidence as to the distance the electric car was from the place of the collision when the motorman observed or had reason to believe that Hoffman intended to proceed across the tracks, it was not an unreasonable deduction that, unless the electric car was proceeding at a very low rate of speed, it could not have been so brought under control as to avoid striking the motor-car. It was not, therefore, a necessary conclusion that the defendants, by some unlawful act or omission, had made it impossible to prevent the accident after the motorman became aware of Hoffman's negligence in proceeding upon the tracks. The jury, with the evidence of all these conditions before them, had declared that after Hoffman's negligence there was nothing the defendants could have done to prevent the collision.

The plaintiff Rolph J. Hoffman was, therefore, not entitled to judgment.

But no negligence had been found against the plaintiff Eva Hoffman, and she was not responsible for her husband's negligence. There was evidence that she requested him to stop; if that was the fact, and if he heard her request, he did not comply.

Reference to *Mathews v. London Street Tramways Co.* (1888), 5 Times L.R. 3.

There should be judgment for the plaintiff Eva Hoffman for \$400 and costs on the County Court scale without set-off. The action should be dismissed as to the claim of the plaintiff Rolph J. Hoffman, who should pay half the costs of the defendants on the Supreme Court scale.