Q. And am I to understand that you walked across the track where the accident happened without ever looking to see if there was a car near you? A. Yes."

It is suggested that Lizzie might not know of all her sister did. It is enough to say that she is the witness upon whose evidence the plaintiff depends, and she professed to know. Further, if the deceased had looked she would, as Lizzie says, have seen the car and would of course have given the alarm.

In the *Dublin & Wexford Railway Co.* v. *Slattery* (1878), 3 App. Cas. 1156, Lord Hatherly said, "There is in every case a preliminary question which is one of law, viz: whether there is any evidence upon which the jury could properly find the questions for the party upon whom the onus of proof lies; if there is not, the Judge ought to withdraw the question from the jury and direct a nonsuit if the onus is on the plaintiff, or direct a verdict for the plaintiff if the onus is on the defendant, and he quotes Chief Barron Palles as saying: "When there is proved as part of the plaintiff's case . . . an act of the plaintiff which *per se* amounts to negligence, and when it appears that such act caused or directly contributed to the injury, the defendant is entitled to have the case withdrawn from the jury.'" Resuming, Lord Hatherly says: "If such contributory negligence be admitted by the plaintiff, or be proved by the plaintiff's witnesses, while establishing negligence against the defendants, I do not think there is anything left for the jury to decide, there being no contest of fact." . . . And this statement of the law by his Lordship is exceedingly pertinent in this case. "I cannot consider it a proper question," he says, "for a Judge to ask a jury whether a man walking or running across a line of railway on which a train is expected, without looking to see whether a train is in sight, be an act of negligence. As Mr. Justice Montague Smith observed in *Siner* v. *Great Western Railway Company*, "Judges cannot denude themselves of the knowledge of the incidents of railway travelling which is common to all," and again: "I do not think it would be reasonable to infer that a man exercised due caution in walking on a railway at night without looking about him."

Lord Coleridge, at p. 1194, says: "Now it is admitted that in order to justify a case being submitted to a jury, there must be evidence of negligence on the part of the