

a driver go ahead of his team to look for a train, as where he could neither see nor hear an approaching train; but whether this extra precaution is required is a question of fact for the jury. And mere inability to hear the ordinary noises of a train is not sufficient to require that such precaution be taken, if signals are required or ordinarily given at that crossing, and, if given, could be heard.

It would seem to go without saying that a traveller is not guilty of contributory negligence in failing to look for trains when to look would be useless, but nevertheless the courts have been called upon to say so in numerous cases, examples of which are cited in the foot-note.

As a part of the general rule that a traveller should look and listen upon approaching a railroad crossing, it is laid down that he should look in both directions. But when greater danger is to be anticipated from one direction than the other, he may be justified in paying most attention to that direction, though this cannot be said to be a general rule.

Running one train or detached cars closely behind another train creates a situation which is peculiarly liable to result in catching a traveller off his guard, and the fact that a train has just passed is regarded as some excuse at least for a traveller who neglects to look in the direction from which it came.

A traveller on a highway has a right to rely somewhat upon the performance of a custom or duty of a railroad company to give signals upon approaching a crossing; but its failure to do so does not excuse want of care on his part. He has no right to assume that no train is approaching, if his view is obstructed, from the mere fact that no whistle is sounded. But failure of a driver to stop, look, and listen is excused where his team is beyond his control.

And while the cases are not entirely harmonious the weight of authority, as well as the better reasoning, is that where a road which crosses a railroad is apparently open to the public, and is used by it with the assent or acquiescence of the railroad