

His Lordship: Then the answer to the 7th should be struck out; because you say in effect that he could have avoided the accident if he had not waited until too late. I think you had better go back, consider it, and come back again. And make sure what you really mean."

The jury then retire, and after some time return again to the court-room.

"His Lordship: The only change is taking out the answer to 7. What you say in effect is that both these people were to blame, and that the motorman, after he saw that the plaintiff was in danger, could not have stopped his car. That is the effect of it?"

The Foreman: Yes.

His Lordship: Mr. MacGregor, I must endorse the record dismiss in this action. The jury have been rather friendly to the Street Railway Company. I cannot help it.

Mr. MacGregor asks for a stay.

His Lordship: I had not observed that the jury had struck out the 'No' in answer to the 6th question. But I have asked them if their idea was that the motorman, after he saw the position in which the plaintiff was could not by the exercise of reasonable care have prevented the accident. They said that was their view. I will give you a stay."

It will be seen that the jury found that the motorman was guilty of negligence by not applying the brakes when he first noticed the plaintiff heading across the tracks; that the plaintiff by the exercise of reasonable care could have avoided the accident, and that he was negligent in not seeing that he had sufficient time to cross to the north side of the track in safety, meaning, as I take it, that he should have seen that he had not sufficient time to cross to the north in safety, and should have not therefore have attempted it.

They further say that the accident was caused by the negligence of both.

When they first returned to Court they answered the 6th question ("Could the motorman after he saw the plaintiff was about to drive across the track, by the exercise of reasonable care have avoided the accident?") "No." To the 7th, "if he could, of what negligence was he guilty?" they answered: "In waiting until too late before applying the brakes." The 6th and 7th questions being contradictory they retired, and on their return they had struck out the