

an allegation of contributory negligence of the respondent to such an extent that by law he cannot recover. The principles of law involved are, in my opinion, identical with those decided by the House of Lords in the case of *Dublin, Wicklow & Wexford Railway Company v. Slattery* (L. R. 3 App. Cases, 1155), and the circumstances are also substantially identical. In that case it was decided that "where there is conflicting evidence on a question of fact, whatever may be the opinion of the judge who tries the case, as to the value of that evidence, he must leave the consideration of it for the decision of the jury, and it was held that that was a case that was properly left to the jury, for that where there was contradictory evidence on facts, the jurors, and not the judge, must decide upon them." In that case it was also held that "where notices have been put up by a railway company forbidding persons to cross the line at a particular point, but these notices have been continually disregarded by the public, and the company's servants have not interfered to enforce their observance, the company cannot, in the case of an injury occurring to any one crossing the line at that point, set up the existence of such notices by way of answer to an action for damages for such injury." It is claimed that the weight of evidence as to certain controlling positions in the case was in favor of the appellants, and that the verdict should therefore be set aside. In the case just quoted the evidence on behalf of the company was that of ten against three as to the question of the engineer on approaching the station whistling or ringing the bell. This was the point on which the decision of the case turned, and the finding of the jury was sustained. In this case several witnesses proved the bell of the engine was rung and the whistle sounded, but that was contradicted more fully than in the case referred to, and the jury found in favor of the latter. The plaintiff's witnesses established a clear case of negligence on the part of the engine driver of the appellants, and such as I think it would be unjustifiable in a judge to withdraw from a jury. The jury having decided the issue in favor of the respondent, we are asked to set aside the verdict and order a new trial, or to non-suit the respondent. Have we the right or power to do either, is the next question to be considered?

The evidence shows that the station in question was in the suburbs of Saint Johns, where two streets crossed several shunt-