

way. From those to whom much is given much is rightly required. The great privileges accorded to those operating dangerous vehicles upon a highway require the court to exact from them a corresponding degree of care. This is only the familiar test of "what is reasonable under the circumstances." A man in charge of a dangerous instrument is reasonably required to exercise great watchfulness, because a reasonable man would expect to do so. The user of the highway for rapid transit purposes, though lawful and expressly sanctioned by the Legislature, is, nevertheless, so perilous to the wayfarer that those in charge of the rapidly moving vehicle ought at all times to watch for the unwary and negligent foot-passenger—and they cannot escape from this duty by asserting that they did not in fact perceive the plaintiff's danger. Adapting the language of *Davies v. Mann*, they are bound to go along the highway at such a pace and with such vigilance as to prevent mischief."

The judgment of the Divisional Court in the *Jones* case was reversed in appeal,<sup>1</sup> the written reasons being those of Mr. Justice Garrow and Mr. Justice Meredith, the other judges expressing their concurrence. Mr. Justice Meredith thought that the opinion of the Judges in the Divisional Court did not put sufficient emphasis upon the duty of the pedestrian. "No reasonable fault," he says, "can be found with the expression of opinion given in the Divisional Court, as to the duty of persons operating a railway along the surface of a public road; but fault should be found, I think, with the failure to give expression to the corresponding duty of others also using the highway. For the expressions, as to the duty of the railway company, apply at least equally to all persons making use of such a road; care is as much the duty of the one as the other; and the common expression, the greater the danger the greater the care, applies, not to one side alone, but to all alike; and I am quite unable to agree in the proposition that all persons have a right equal to that of the railway company to occupy that part of the highway where the company's tracks are laid; that would render the

1. (1911) 25 O.L.R. 158.