

I think that it could not be found on this evidence that the motorman was guilty of negligence after he saw or could have seen that the plaintiff "intended to proceed in his course across the track."

The plaintiff can tell nothing about the matter: he did not see the car "till it came crash right up against the rig about four feet off"—"it was right on top of me or close to me before I seen anything." Buchner heard the brakes put on but does not assist on this point.

McCormick says when he noticed the horse crossing the track then he heard the motorman ring the gong—"the door was open and the car began to slow down, but it did not quite stop before it struck the buggy—the motorman shut off the power, and put on the brakes and rang the bell."

Holden says the motorman "stopped the car as quickly as he could." Judge "heard the motorman put the brakes on, and , . . was almost thrown off his feet." Cowan "the car approached him as if it were stopping—in a slow manner."

None of those witnesses helps at all in the enquiry now in hand—and I cannot see that any case is made of ultimate or casual negligence.

In my opinion the appeal should be dismissed with costs.

Note.—Since the above was written we have been informed by the official stenographer that his transcript of his notes is erroneous in leaving out the word "not" in two places. He says his notes read:

"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 the car. That is the effect of it?

The Foreman: Yes."

The second passage should read:

"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."

This clears up much difficulty and makes, in my view, inevitable the conclusion I have already arrived at.