

at St. Johns," and while on the highway crossing he was by the defendants' misconduct struck by a locomotive engine of defendants', propelled against plaintiff from behind, without plaintiff seeing or having warning, and he lost his left arm, was sick six months and prevented from working for that time. The plaintiff alleged that defendants were bound to comply with all the requirements of law to prevent accidents, to sound the whistle, and to keep the bell ringing, &c., but did not do either, and that the railway crossing was unprotected by gates or fencing, in flagrant violation of law. That plaintiff, a married man, is disabled from earning his livelihood; and \$6,000 damages were claimed.

The plea is to the effect that the accident was not caused by acts, omissions or negligence of the defendants, but by the plaintiff's own fault, &c. Another plea alleges that the engine and locomotive were in their proper place, the locomotive moving slowly, and the bell ringing; that plaintiff was not struck at the crossing, but while unlawfully standing upon the railway track, and that he was carelessly walking on the track, and contributed to the injury, and the accident would not have happened had he exercised due care.

The case was tried before a jury, and the plaintiff got a verdict for \$5,000. There is now before us the defendants' motion for a new trial.

From the record we see that in November 1876, the plaintiff met with the accident alluded to on the railroad track at St. Johns. His left arm was lacerated and the bone of it fractured, and the arm had to be removed. We cannot but sympathize deeply with him, yet we must not lose sight of justice. We have to deal with the case as it is before us, in all its aspects and as regards both parties. We have to consider all that is in issue. When the accident happened, was the plaintiff as he says on the public highway crossing? No such thing. He was walking on the railway track, between the rails, his back towards the locomotive that was advancing towards him from the turn table building. He had just issued out of the freight office of the Vermont Central; he crossed to the railroad track and was struck before he had reached the crossing. He was shoved along by the locomotive to the crossing.

Plaintiff was struck at about the fifth or sixth tie from the crossing. Even Nicols admits that where the plaintiff was picked up was not where he was first struck. Plaintiff might have made for the crossing by a safe footpath from the office of the Vermont Central; Tenny, witness for plaintiff, says so. Tenny was at the crossing at the time of the accident, and has to say that plaintiff was struck not on the crossing, but on the railroad track between the rails. So suddenly did plaintiff, issuing from the office, get upon the rails, that the accident was unavoidable, say some of the defendants' witnesses. The rails were clear when the locomotive started from the engine house. Were the locomotive bell ringing and whistle blowing at the time plaintiff was struck? There is conflict of proof about this. Were there gates at the highway crossing? No; but what of that? Absolutely nothing. Had there been two or any number of gates there they could not have prevented the plaintiff being struck on the railroad track, at a distance from the crossing. Had plaintiff right to be on the track as he was? Certainly not. It is said that he was a Custom House officer on duty. This can't help plaintiff. A Custom House officer on duty had no right, issuing from that office, to go to the railroad line, and walk along the track, to get to the highway crossing, when, as his own witness says, "Plaintiff could have proceeded directly from the door of the office to the public crossing, without crossing the track." The plaintiff was walking on the track in clear violation of the Railway Act. It is nonsense to say that his duty called upon him, on leaving the Vermont Central Office, to make for the railway track, and walk along it to get to the public crossing at the highway, rather than to take the safe path from the office. Yet, if plaintiff had not held this unreasonable doctrine he would not have suffered. He still says that he had right to be where he was, and so the jury has found; yet their holding so is because of their finding (contrarily to overwhelming proofs) that plaintiff was struck on the public crossing. (See the 3rd and 6th findings.)

The motion for new trial is founded on some eighteen reasons. Misdirection by the Judge at the trial is charged; the findings of the jury on material points are said to be con-