

ence, would be able to stop the train more quickly by the engine than would be possible by the emergency brake. It seems to me, however, that the jury in speaking of signalling appliances meant appliances for warning persons about to cross the railway, and not appliances for communicating with the engineer, for in this case the evidence of Price, the brakeman, who was the person stationed at the foremost end of the car, is to the effect that he did not attempt to stop the train until after the deceased had been run over, but he did, by means of the air whistle, endeavour to warn the occupants of the cutter. . . .

There was a conflict of evidence as to whether the engine whistle was sounded and the bell rung; but, even if both of these things were done, the company would not thereby be relieved from their statutory duty to give the warning contemplated by sec. 276. The language of that section is mandatory. The person standing on the foremost platform of a train not headed by an engine, etc., "shall warn persons standing on or crossing or about to cross the track," etc.; and the question here is whether such statutory warning was given. Glenn, according to his evidence, did not hear the first air whistle, but only the one sounded when he was within 29 feet of the east rail of the track, and at the same moment he saw the approaching train, the north end being at a point which he fixes as about 60 or 70 feet south of the place of the accident. He was then travelling at the rate of from 8 to 10 miles an hour, and was within a couple of lengths of the horse and cutter from the track. He had but an instant in which to determine upon his course of action. The thought came to him that if he were to continue he would run into the train and he pulled on the reins; at the same moment the deceased grabbed them in front of Glenn's hands, bringing the horse almost on its haunches on the track. Glenn then recovered and loosened the reins, and the horse jumped forward clearing the track, and about at the same time the deceased jumped out of the cutter, alighting upon the track, when in a moment he was fatally injured.

Each occupant of the cutter was entitled to the benefit of the statutory provision in question. The only evidence of the deceased having heard the warning of the air whistle is that furnished by his act of seizing the reins. This was at some point at most not 30 feet from the track.

The jury's finding in effect is, that the statutory warning contemplated by the section was not given, and there is evidence to support that view. Apparently they accept Glenn's