knew that he was passing from a place of safety into a place of general danger; he intended to do that, and did it; but did it without taking the trouble—if trouble it can be called —to turn his head and know if he safely might. His one excuse seems to me to condemn rather than to acquit him, if it really have any effect upon the question at all. He looked, at about 400 feet and again at about 100 feet, before attempting to cross. If it was right to look at 400 or 100 feet away, how much more so just before going upon dangerous ground. The noise of his cart—the excuse for not hearing —made it more imperative to look at the proper place and time. When he looked first about 400 feet away, a car would be out of sight at about 400 feet off; when he last looked at about 100 it would be out of sight; at each or either time it might be in sight and he have failed to observe it. I cannot imagine any ordinarily careful person acting as the plaintiff says he did just before turning upon the track. His position on the left hand side of the road would indicate that he was going to stop at some place on that side or to turn to the left at one of the cross streets, if it indicated anything. Some measure of care is required of a driver ahead; if his stopping or turning one way or other will interfere with traffic behind him, he should indicate his intention in time by raising his whip or arm or in some other recognized or sufficient manner.

Then the one question is: Was the plaintiff upon his shewing guilty of negligence? That his act at least contributed to the injury is unquestioned, and unquestionable. Without it he could not have been injured.

All the facts are admitted; for the purposes of the motion for nonsuit the plaintiff's statement of them is accepted; no other evidence strengthens it upon this question. There is no disputed question of fact for the jury; no inference of fact to be drawn. All that has to be considered is, did his admitted act constitute negligence?

Is that a question for the Court or for the jury? Unhesitatingly I would say for the Court in the first place to say whether it afforded any reasonable evidence to go to the jury. It is for the Court to say whether there is any reasonable evidence upon which a jury could find, and it is only after that question is answered in the affirmative that it is for the jury to say what the finding should be.

Upon any given state of facts it is for the Judge to say whether negligence can rightly be inferred, and for the jury to say whether it ought to be inferred: Jackson v. Metropolitan R. W. Co., 3 App. Cas. 193.

Appeal allowed and action dismissed with costs on lower scale.

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