

The action was for negligence in the operation of an engine and passenger train at a crossing over Main street, in the town of Forest, on the evening of 9th October, 1901.

On the evening in question, about 6 o'clock, the plaintiff, a farmer, with his wife and two very young children, was driving home from an agricultural fair in the town of Forest, which they had been attending. The evening was rather wet, and the plaintiff had, in consequence, put up the sides of the covered buggy in which he and his family were driving, which interfered to some extent with his seeing and hearing. He left the hotel on King street, drove to Main street, and then along Main street to the crossing where the collision took place by which the plaintiff himself was severely injured, his wife and two children were killed, and his horse and buggy destroyed. The track crosses Main street, a leading street in the town, on the level, and is not protected by any gate or by a watchman; although on the day in question one Hallisey, employed by the town corporation, was stationed at this crossing as watchman, owing to the number of people who would probably cross to attend the fair. Hallisey saw plaintiff approaching. He knew the train was about to cross, and he called out to warn plaintiff of his danger, but without effect. Others also called out to plaintiff to beware of the approaching train equally without effect; plaintiff's explanation in the witness box being that he heard none of these warnings. Plaintiff said he looked to see if the train was in sight, and could not see it. He also said he heard no warning whistle nor the ringing of the bell. The evidence was clear and distinct that the plaintiff could have seen the approaching train for at least a distance of 40 feet before he reached the track in question, and if he looked he must have looked too soon or imperfectly, and there was no doubt that for at least 8 to 10 rods before the crossing the bell was rung, and the whistle was also sounded at what was called the whistling post. The plaintiff did not stop and listen, but drove on in a hurry to get home to his farm, as he said, and knew nothing about the approach of the train until the moment of the collision.

The jury, after a very fair and full charge, practically unobjected to by either counsel, except upon one point, found that the whistle was blown at the whistling post, the bell commenced to sound 8 to 10 rods east of Main street, and rang continuously; that Main street crossing is in a thickly peopled portion of the village; that the engine was proceeding at a speed of 20 miles an hour; that such speed was a dangerous speed in that locality; that the death of Mrs. Mc-