

Q. 5. Was the accident caused:

(a) By the negligence of the motorman?

(b) or by the negligence of the plaintiff?

(c) or by the negligence of both? A. Both.

Q. 6. Could the motorman after he saw the plaintiff was about to drive across the tracks by the exercise of reasonable care, have avoided the accident? A. No.

Q. 7. If he could of what negligence was he guilty? A. In waiting until too late before applying the brakes.

Q. 8. At what sum do you assess the plaintiff's damages? A. \$800.

His Lordship: Your answer to the 6th is inconsistent with the answer to the 7th.

Mr. Dewart: I submit not.

His Lordship: Plainly so—You find they are both guilty of negligence, and you find that the motorman was guilty in waiting till too late before applying the brakes. Now what does that mean in connection with 6?

Foreman of Jury: He was too near to the man in the rig to stop to avoid the accident.

His Lordship: Then why do you say that he was negligent in waiting until too late before applying the brakes? One or other of those answers is wrong, it strikes me, or are inconsistent with one another. Now, what is it you mean? Just state generally what idea you have in all this answer. Just state generally what you think was the position of the parties and the negligence of both.

Foreman: According to the evidence he had not a chance to do anything but what he did.

His Lordship: Then you should have answered this 7th question—you should not have answered the way you did. He was negligent in not applying the brakes; because that means that after he became aware the plaintiff was in danger he might have avoided the accident by putting on the brakes or by doing something. Is that what you mean, or do you mean the contrary?

Foreman: We mean the contrary—that he could not have done it in the time.

His Lordship: Then your 7th answer should be struck out. Now, which of these answers is to be taken as correct?

Foreman: We said he could not have avoided the accident when he noticed it.