

crossing; the motorman had been signalled to stop, but failed to do so. The plaintiff alighted safely, but found himself in front of a horse and cab driven swiftly towards him. In order to avoid a collision with the horse, and also in order to cross to the west side of the street, the plaintiff turned behind the car, he had just left and passed on towards the other track; as he reached it, he became aware of a car coming towards him at a rapid rate, and to avoid being run down he flung himself on the fender, thus saving his life, but he was seriously injured. In an action to recover damages for his injuries he was a witness at the trial, and said that it was impossible to get out of the way of the car; he did not hear the gong sound, although if it had been rung he would have heard it. By one of the regulations forming part of the agreement between the city corporation and the defendants, validated by 57 Vict. c. 76 (O.), under which the defendants operated their cars on the city's highways, it was provided that each car was to be supplied with a gong, to be sounded by the driver when the car approached to within 50 feet of each crossing. This was not brought to the attention of the judge at the trial. The plaintiff, however, was aware that it was the usual practice to sound the gong at crossings and he expected it to be done when a car was approaching a crossing.

*Held*, that, even if the regulation had not the force of a statutory requirement, the proof of failure to comply with a precaution which the defendants had recognized as important for the safety of persons using the crossing on streets occupied by the railway, was evidence for the jury of negligence in the conduct of the car; and the question whether the gong was sounded was for the jury.

*Seemle*, per Moss, C.J.O., that the term "crossing" in the agreement, is intended to indicate any place on or along the streets occupied by the railway where there is a walk laid for the purpose of enabling foot passengers to cross from one side of the street to another, and where the cars would stop to take up or let down passengers; and is not confined to the crossing of an intersecting street.

The Court declined to interfere with the direction of the Court below in withholding costs from the plaintiff, in setting aside a nonsuit and granting a new trial.

Order of a Divisional Court affirmed.

*H. S. Osler*, K.C., for defendants; appellants. *J. A. Ritchie*, for plaintiff.