

According to the strongest testimony, as I understand it, in favour of plaintiff, he was, at the time he started to go across the track, only 10 feet away from the car that ran him down. He had then to cross the track and the devil strip, and got, it is said, upon the other track—which would probably be a distance of two and a half feet; the car was going at the rate of 7 or 8 miles an hour, and he was running fast.

Now it seems to me it would be most unjust, under such circumstances, to fasten upon the motorman a breach of duty because, in such an emergency, the boy coming out suddenly from a place where he was not expected to be, he did not see and immediately apply the proper remedy. The man had but two eyes; of course he had to keep a proper look-out, but the occurrence happened in possibly the fraction of an instant, and to say that the motorman was guilty of negligence and his employers are liable because, in circumstances such as existed in this case, he did not see the boy and did not apply the remedy, would be, I think, practically to make the defendants insurers against any accident that happens.

The plaintiff contends that the proper inference is that if the motorman had been on the look-out he would have seen the boy and have tripped the fender and so avoided the accident. I think it would be mere speculation in this case to say that the tripping of the fender would have had any such effect.

It is suggested that if the gong had been rung the boy would have been warned, and either would not have got off the drawbar, or, if he had got off, would have looked out for the car, but his own evidence is against that view. He gave his evidence very frankly, and his testimony was that the noise was such that if the gong had been rung he did not think he would have heard it; and his own evidence is that he ran so fast that he could not stop, and that he did not look.

We think, on the evidence, that if anybody was to blame it was the unfortunate boy himself, and, although it is a deplorable accident, it is one for which defendants ought not to be made liable.

It is manifest that the jury were struggling—whether against their consciences or not it is difficult to say—to find a verdict for the plaintiff upon some ground or other. It