

it was—in cases in which other circumstances intervene, or as a rule of general application. It may be said that the man may have seen the car, and not unreasonably, though mistakenly, have thought that it was about to stop, or that if its speed were not increased, he would have time to cross; but there is nothing in the evidence to indicate this, and it was a want of care to risk hurt or loss on conjecture as to what the driver of the car would do. There was, therefore, no reasonable evidence to support the finding of the jury to the effect that the deceased was not guilty of any negligence.”

The learned judge thought there ought to be a new trial. With this view Chief Justice Moss and Mr. Justice McLaren agreed. Mr. Justice Osler and Mr. Justice Garrow took an even stronger view against the plaintiff. They thought the action ought to be dismissed with costs, Mr. Justice Garrow expressing the opinion that there was not a particle of evidence reasonably proper for the jury.

The railway company not being content to have the action retried appealed to the Judicial Committee of the Privy Council. The plaintiff cross appealed, asking that the judgment at the trial against the railway company should be restored. The appeal was dismissed and the cross appeal allowed.

Advising His Majesty the Board said: “Their Lordships are further of opinion that the deceased, in attempting to cross in front of the tram-car, as the driver of the latter in the above-quoted passage says he did (the man, unfortunately, cannot speak for himself), was not clearly guilty of the “folly and recklessness” causing his death which Lord Cairns, in his judgment in *Dublin, Wicklow, and Wexford R.W. Co. v. Slattery* (at p. 1166), refers to as sufficient to entitle the defendants to a direction. It is suggested that the deceased must have seen, or ought to have seen, the tram-car, and had no right to assume it would have been slowed down, or that its driver would have ascertained that there was no traffic with which it might come in contact before he proceeded to apply his power and cross the thoroughfare. But why not assume these things? It was the driver’s duty to do them all, and traffic in the streets would be