

ing some warning in approaching a crossing such as John street.

3. Did plaintiff omit to take any reasonable care which he should have taken, and which, if taken, would have prevented the occurrence in question? A. No.

4. If so, what such care did he omit to take?

5. Could defendants, after plaintiff's danger became or should have been apparent, have avoided injuring plaintiff? Yes, after it should have been apparent.

6. If so, what could they have done which they did not do? A. We think they could have stopped the car.

7. At what sum do you assess plaintiff's damages? A. \$1,000.

Supplemental question: Was it the duty of defendants, apart from the requirements of sec. 228 of the Railway Act, to have warned plaintiff of the approach of the hand-car which struck his cart? A. Yes.

It was submitted on behalf of defendants that there was no evidence on the part of plaintiff rendering them liable for the accident which happened; and in support of this contention it was strenuously urged that to hold defendants bound to give notice of the passing of a hand-car, in circumstances such as the present, would be for the jury to assume the functions of the Railway Commission; that a railway company using a hand-car in the ordinary manner, and having no obligation imposed upon them by the statute with reference to signals or notice, were not bound to give notice, and for the jury to find that their neglect in so doing was negligence was beyond their competency, in the circumstances of this case . . .

[Reference to Lake Erie and Detroit River R. W. Co. v. Barclay, 30 S. C. R. 360.]

Here the jury do not assume to lay down any general rule as to what care or precaution should be taken. They simply find that, having regard to the condition of the approach to this crossing on defendants' railway, and the circumstances of the case, some warning should have been given. The answer, I think, was unobjectionable. It simply disposed of a case, having regard to certain special circumstances. I think there was evidence to support the finding, and, under the authority of the above case, that the findings of the jury in no way infringed upon the jurisdiction of the Railway Commission.