up to the southerly car without taking care to see that in doing so they were not endangering the safety of those who were employed about the elevator in loading the cars and without any warning or other indication of their approach.

The case is not, I think, like that of a person crossing the line of a railway upon which trains might be expected at any time to pass. The siding upon which in this case the cars were standing was, as I understand, used only in connection with the business of the elevator, and when it was necessary to take cars there to be loaded, or to take them away after they had been loaded, there was evidence from which the jury might have been led to the conclusion that those in charge of the shunting operations knew that it was, if not probable, at least possible, that some of the cars which they intended to take away were not coupled, and that there would probably be a space between them, through which those working about the elevator, or some of them, might be passing in going, in discharge of their duties, from one side of the opening to the other. . . .

There was also evidence to go to the jury that defendants themselves recognized the necessity of employing means to prevent injury from happening to those working about the cars, as indicated by the ringing of the bell as the engine approached the cars as a warning that it was coming; by the bringing the engine to a stop a short distance from the cars before backing it up to the train and making the coupling, and also possibly by having brakesmen to see that the coupling was properly effected and to signal to the engine-driver as to how and when he should back up and when he should go ahead with the train when it was made up ready to be pulled out. . . .

My learned brother was, I think, right in refusing to withdraw the case from the jury on the ground that, upon plaintiff's own shewing, deceased's injury was caused or contributed to by his own negligence so as to disentitle plaintiff to recover.

I am not prepared to assent to the proposition that, regardless of the circumstances of the particular case, if it appears that the person injured has not before crossing a railway track looked and listened for an approaching train, and that, if he had done so, he would have seen that one was approaching, and that it was dangerous for him to cross, it is the duty of the trial Judge to withdraw the case from the jury. . . . Proof of what I have referred to as to looking and listening may in some cases afford such cogent evidence of a failure to discharge the duty of taking reasonable care, that it may be the duty of the Judge to withdraw the case