

the lines, and his horse started to cross—the last east-going car having got about 30 feet away by this time. Two cars had passed to the west during this period. When crossing, he saw a third west-bound car. When it came within four feet of his buggy, he grabbed the whip to get over, but did not succeed in escaping: the car struck the right front wheel; he was thrown out and hurt.

Three acts of negligence were alleged: (1) not sounding the gong, thereby lulling the plaintiff into a sense of security; (2) not sounding the gong when the motorman saw that the plaintiff's horse was on the track; and (3) "the motorman saw him or ought to have seen him in sufficient time to have enabled him, if he had used the appliances which he had at his command, as he ought to have used them, to have stopped the car and have avoided the collision."

After much evidence had been given and after a careful and unexceptionable charge, questions were left to the jury which they answered thus:—

"Q. 1. Was the motorman guilty of negligence? A. Yes.

"Q. 2. If so, of what negligence? A. By not applying the brakes when he first noticed plaintiff heading across the tracks.

"Q. 3. Could the plaintiff, by the exercise of reasonable care, have avoided the accident? A. Yes.

"Q. 4. If he could, in what respect was he negligent? A. In not seeing he had sufficient time to cross to the north side of the tracks in safety.

"Q. 5. Was the accident caused (a) by the negligence of the motorman? (b) or by the negligence of the plaintiff? (c) or by the negligence of both? A. Both.

"Q. 6. Could the motorman, after he saw the plaintiff was about to drive across the tracks, by the exercise of reasonable care have avoided the accident? A. No.

"Q. 7. If he could, of what negligence was he guilty? A. In waiting until too late before applying the brakes.

"Q. 8. At what sum do you assess the plaintiff's damages? A. \$800."

The learned Chief Justice was not satisfied with the answers, and the following is the official report of what then took place:—

"His Lordship: Your answer to the 6th is inconsistent with the answer to the 7th.

"Mr. Dewart (counsel for the defendants): I submit not.

"His Lordship: Plainly so. You find they are both guilty of negligence, and you find that the motorman was guilty in wait-