

John Foster, was driving east on Dundas street, west of Margueretta street. He says:—

“Where were you relatively to Margueretta street? How near was the car that struck the rig to you when you saw it strike the rig? A. I was almost by the side of it.

Q. Where was the car when it struck the rig? A. Just in the middle of Margueretta street.

Q. How far would you say the west bound car was east of Mr. Herron when he went to cross the track? A. About 75 feet.

Q. Are you sure of that? A. Yes.

Q. About where, as regards Margueretta street, did these two cars pass one another? How far east? A. About 90 feet.”

On cross-examination he said:—

“Q. He was in the act of crossing at the time that you say you saw the car coming west, 75 feet away? A. Yes.

Q. How far had he got with his horse at that time? A. The horse had crossed over the tracks and just as the buggy was on the track.

Q. That was when you saw the east bound car coming 75 feet away, was it? A. No, the west bound car.

Q. It was when the west bound car was 75 feet away, was that the time his horse had just got across the tracks and his buggy was on the tracks? A. Yes.”

For the defence the motorman Thompson was asked:—

“Q. What was the first that you saw of Mr. Herron and his rig? A. Well, I had just been after passing a car going east bound. Just east of Margueretta street. Just on Margueretta at the east. I sounded the gong approaching the car and just as the car had got clear of me I noticed Mr. Herron's horse starting to come across, and I sounded the gong again. I saw that he was not going to stop. I would not say that I sounded the gong after that, but I put my best energies towards stopping the car, and I thought that I was going to succeed till I was about to hit him. Mr. Herron never seemed to see me until I was within 4 feet of him and then he looked around at the time.

Q. How far then was he away from you in a direction east and west, at the time that you say him first? A. Well, I was approaching Margueretta street when I saw his horse's head first. That was after the horse's head had passed.”

The next question and answer is inconsistent with this:—