

"There was clear evidence that the plaintiff's conduct caused the accident. He walked into the tram car, when if he had looked he must have seen it. Then, even though the plaintiff was negligent, could the driver have avoided the accident by the exercise of reasonable care? They could find no evidence that the driver could have avoided the accident."

2. Then as to the *Canadian Cases*:—

The only other case I have found in the English books, dealing directly with the question under consideration is the *King* case, which originated not in England but in Toronto.<sup>6</sup> In the Ontario Court of Appeal<sup>7</sup> Mr. Justice Meredith expressed views similar in their import to those put forward by him subsequently in the *Jones* case. He said: "No reasonable and unprejudiced man could say that the deceased acted with ordinary care, or that the accident would have happened had he taken such care. He knew the locality well; he knew that he was about to cross the tracks of the railway in the very heart of the city, where cars were constantly passing up and down, and that it was a busy hour of the morning, when many were hurrying to their work; and that he was in a bread waggon, which much obscured his view. In these circumstances he drove rapidly along until his waggon had almost, if not quite, crossed the down track, and was upon the up track, when it was struck by a car moving on the up track, and he was thrown down upon the pavement falling upon it in such a manner as to cause his death. When approaching the place of the accident, the car was going at less speed than the waggon, and there was nothing to have prevented the deceased seeing the car, except in so far as the construction of the cover of his waggon may have done so. He, therefore, must have seen and risked the danger, or else have neglected to look, and so, with perhaps as great fault, also risked the danger, taking his chances of injury or death. The facts of this case make concise logic of this character applicable and unanswerable, though it may be found fault with—as

6. *Toronto Railway Co. v. King* (1908), A.C. 260, and 12 O.W.R. 40.

7. (1906), 8 O.W.R. 507.