The jury found that the speed of the car on the occasion of the accident was excessive; that the motorman was negligent in not sounding the gong; and that the plaintiff could not have avoided the accident, nor be justly accused of ordinary negligence; and assessed the damages at $200.

N. W. Rowell, for defendants.

J. H. Moss, for plaintiff.

THE COURT (BOYD, C., MEREDITH, J.) held that the case was not distinguishable from Danger v. London Street R. W. Co., 30 O. R. 493.

BOYD, C.—When vehicles are moving ahead of the cars and in the same direction, it is reasonable to hold that the drivers of the vehicles, who know when and where they are going to turn and cross the track, should be vigilant to see that no car is coming behind them. A greater burden in this regard should rest on the driver than on the motorman, who is not to be kept in a state of nervousness and apprehension that some one or everyone ahead may cross in front of the moving car at any moment. The driver can move in any direction, not so the motorman. The right of way being with the car, the driver should keep out of its track, unless upon observation he is satisfied that the passage is clear.

MEREDITH, J.—It would have been better if the usual qustions had been submitted to the jury. Little is ever gained by departing from well settled forms ; often a good deal is lost. In this case there is no direct finding that the negligence which the jury attributed to the defendants was the proximate cause of the plaintiff's injury; the usual question was not asked. Nor was the question whether, assuming the plaintiff to have by negligence contributed to the accident, might the defendants yet have by the exercise of ordinary care avoided the injury. This subject seems to have been dealt with, during the charge, by withdrawing it from the jury, on the ground that it was plain that the injury could not have been so avoided. This was done in the plaintiff's interests, it being said that the defendants conceded it. It seems to have been overlooked at the moment that it might also, in another view of the case, the one now being dealt with, aid the plaintiff, and no assent on his part is mentioned. Both parties are perhaps now precluded from urging that the injury might have been so avoided; still it would have been more satisfactory to have had the usual answers.

And, if the case should have gone to the jury at all, it would have been better if the jury had been charged at least somewhat in accordance with the law as expounded in the case of Danger v. London Street R. W. Co., 30 O. R. 493.

That is a case which was binding upon the trial Judge, and is under the statute binding upon us. It was the latest