

Upon looking at the charge of the Judge, it is manifest that he was careful, more than once, to tell the jury that negligence of defendants would not suffice to give plaintiff a cause of action, unless the injury sustained by him was directly attributable to such negligence; and, in discussing with the jury the acts of negligence charged against defendants, the learned Judge always dwells upon their possible or probable effects upon plaintiff's horses. Then, in dealing with the question, "Were defendants the Canadian Pacific Railway Company guilty of negligence in reference to the car-load of horses in question?" the Judge said: "If you find there was negligence on the part of the railway company causing this injury to Mr. Booth's horses, you will answer the first question, 'No.'" And again: "If you find there was negligence causing the injury to the horses, you will answer that question 'Yes.'"

These instructions distinguish this case from *Hillyer v. Wilkinson Plow Co.*, and, though an explicit finding of causation by the jury would have been more satisfactory, read in the light of the charge the findings made must be taken to mean that defendants were guilty of negligence which caused the damage sustained by plaintiff. Were I free to pass upon the evidence now before us, as I might if sitting as a trial Judge without a jury, it is quite possible that I might reach a different conclusion. But it is, in my opinion, impossible, without unduly interfering with the functions of the jury, now to disturb their finding that defendants were negligent "in not delivering the car of horses at the 'Y' of the connecting line in time for the Friday morning train." Neither do I think it can be said that there was not some evidence that this was the cause of the injuries to the horses. Findings to the contrary would, I think, have been well warranted by the evidence, and, if made, could certainly not have been disturbed.

But the finding that plaintiff's servants could not by the exercise of reasonable care and caution have avoided the accident is, upon the admitted facts, most unsatisfactory. The charge upon this branch of the case was clear and explicit. That the duty of caring for the horses in transit was by the terms of the contract undertaken by plaintiff is indisputable. Plaintiff's evidence is that horses travelling should be rested for several hours after they have been en route for from 28 to 30 hours. To leave them without such rest for over 30 hours is by all his witnesses regarded as dangerous. This