

It can hardly be said that reasonable men could not find that the negligence of the defendants, before mentioned, was the proximate cause of the injury and loss complained of by the plaintiff in this action; there is more to be said in the defendants' favour upon the other point.

Concise and captivating logic such as that the unfortunate man either saw the car approaching and was guilty of negligence in attempting to cross in the face of it, or failed to see it and was guilty of negligence in that failure, does not cover the whole circumstances of such a case as this: the place where the accident happened was a level crossing of a much used highway: it was the duty of the motorman, under the rules of the defendants, to have reduced speed and kept his car carefully under control when approaching such a place; immediately west of it was a regular stopping place for all cars for letting down and taking up passengers, and there were persons there waiting to be taken up; and the highway at the place in question was being renewed, and was in such a condition that the attention of any one crossing over, especially on a bicycle, as the man was, might necessarily be taken up, in picking his way across, to a much greater extent than would have been necessary had the road been in its ordinary state; and that the motorman and his employers knew. These were all very material circumstances affecting the question, what would reasonable persons ordinarily do in such a case?

Under all the circumstances of the case, this question was also, in my opinion, one for the jury; and so the verdict must stand, whether in very truth right or wrong.

GARROW, MACLAREN, and MAGEE, J.J.A., concurred.

Appeal dismissed.

APRIL 29TH, 1912.

*RE WEST LORNE SCRUTINY.

Municipal Corporations—Local Option By-law—Voting on—Scrutiny—Powers of County Court Judge—Votes of Tenants—Residence—Finality of Voters' Lists—Voters' Lists Act, 7 Edw. VII. ch. 4, sec. 24(2)—Votes of Persons Disentitled by Non-residence—Inquiry as to how Ballots Marked—Municipal Act, 1903, sec. 200.

Appeal by D. H. Mehring, the applicant for a scrutiny, from the order of a Divisional Court, 25 O.L.R. 267, varying the order

*To be reported in the Ontario Law Reports.