

him, he omitted such reasonable precautions as would, if exercised, have avoided the accident."

These considerations apply in weighing the degree of care required as between foot passengers and men in charge of a street car operating in public highways.

1. The public have a right to cross a street and go over the street car track for that purpose, and such people have an equal right to be there with the cars.

2. The motorman is in control of a powerful propelling force which if carelessly used may endanger life and limb.

3. The specific business of the man driving the car is to be on the lookout for anyone in danger or likely to be in danger from the movement of the car, and is to use a commensurate degree of care to avert such danger.

4. This is emphatically so when the person on or near the track, and heading that way as if to cross the track, appears to be unconscious of the imminent danger.

5. If the motorman sees the exposed condition of the traveller, and proceeds without giving warning or using his best endeavours to stop, this negligence is excessive and criminal.

6. The circumstances may be such as to warrant the jury in finding there is culpable negligence in the motorman, if he should have timeously seen the dangerous situation, unless he satisfies them that he has good reason for his want of maintaining an effective lookout.

All these elements enter into this present case, and the jury have reached their sense of the situation by saying, as to the plaintiff, that he might have taken a little more care, as compared with their finding, that the motorman should have seen him sooner, and taken proper steps to control the speed or otherwise protect the man from the impact of the car.

In brief, the situation of danger was apparent and should have been manifest to the other agent, and the neglect to take prompt steps at that time to avert the collision was the final act of negligence which gives the right to recover damages, despite the preliminary fault of the plaintiff in getting close to the tracks. As said by a writer in the *Law Quarterly Review*: "The party who last has a clear opportunity of avoiding the accident, notwithstanding the negligence of his opponent, is considered to be solely responsible for it;" vol. II., p. 507 (1886); *Halifax Electric v. Inglis*, 30 S.C.R., at p. 258, *per King, J.*

The judgment should be reversed and the plaintiff should recover \$1,200 and costs of action and appeal.

LATCHFORD, J.:—I agree.