was still some 400 feet away from the railway track when he found himself upon it. His evidence as to whether he was or was not keeping a look-out is very confused and contradictory. It seems plain, however, that he must have seen the train had he been at all on the alert. There is some evidence that the cover of the carriage in which he was sitting was up, and this may have prevented his seeing the train.

In these circumstances, we are to determine whether the nonsuit was right. Has plaintiff adduced evidence which should go to the jury, not only that defendants were negligent, but that the injury he received is attributable to their negligence? If he has failed to do so, the nonsuit was right.

The case of Wakelin v. London and South Western R. W. Co., 12 App. Cas. 41, which was relied on by both parties, does not determine the case before us. . . .

In the present case plaintiff has proved negligence on the part of defendants, and he has also connected their negligence with his injury by saying that, if they had given the statutory warning, he would probably have heard it, and so avoided the accident. There is, therefore, a distinction in this respect which prevents the decision in the Wakelin case from being a guide to us.

In my opinion, we are clearly bound by the authorities to leave to the jury, upon the facts in evidence, the question whether the reason given by plaintiff for his not having seen the train, is a sufficient one. It is for them to determine whether plaintiff exercised reasonable care in the circumstances.

There are numerous dicta in the cases which cover the point, but the late case of Vallée v. Grand Trunk R. W. Co., 1 O. L. R. 224, seems to me decisive upon the question which arises here.

The authorities appear to have gone this far: that where the railway company fail to give the statutory warning of the approach of a train, and an accident happens, plaintiff is entitled to have the opinion of the jury upon any reasonable excuse given for the omission to look out for the approach of the train, and the Judge cannot himself pass upon the sufficiency of the excuse. . . .

In my opinion the excuses offered by plaintiff in the present case for his omission to see the approach of the train in time to avoid the accident, should not, in accordance with the authorities, have been withdrawn from the jury.

Nonsuit set aside and new trial ordered. Defendants to pay costs of former trial and of this appeal.

BOYD, C., and IDINGTON, J., gave reasons in writing for the same conclusion.