

"His Lordship: I will leave to the jury the question—although I think there is no evidence of it, the evidence is all against you on it—whether, after the trainmen—or it would really be this man Rowan—became aware that this man was going to cross the track, he could, by the exercise of reasonable care, have prevented the accident.

"Mr. O'Donoghue: I have no objection to that, but I also want to ask this one.

"His Lordship: Well, I will not do that.

"Mr. O'Donoghue: I only want to get it on the notes. The question I was asking was: Could defendants, notwithstanding the negligence, if any, of the deceased, have avoided the accident, by the exercise of reasonable care?

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"His Lordship: Call the jury back."

The jury are here accordingly brought back into Court, and the following takes place:—

"His Lordship: Counsel for the plaintiff desires me to ask another question. I am going to ask it, although it is involved in the questions you have already been asked. This is what I will ask you: Could the trainmen, after they became aware that the deceased was crossing the switching track, by the exercise of reasonable care, have prevented the accident?

"Mr. O'Donoghue: Your Lordship will understand that that is not the question I submit.

"His Lordship: I understand it perfectly. It is a better question than yours. I will not submit it the other way. If you want it, I will ask, 'Could Rowan?'"

The question following was then added and given to the jury. (I subjoin also their answer):—

"6. Could the trainmen, after they became aware that the deceased was coming to the switching-track, by the exercise of reasonable care, have prevented the accident? A. Yes: ten for, two against."

Upon this the learned Chief Justice said: "I think I must enter judgment for the defendants on these findings. The jury, in their answer to the second question, place the negligence of the defendants upon this ground: that the car should not have been cut loose without a man being in charge of the brake. The effect of that finding, according to the cases, is to negative all the other grounds of negligence that were put forward by the plaintiff—therefore, to negative the failure to whistle as not having been the efficient cause of the accident, and all the other grounds of negligence upon which Mr. O'Donoghue relied. It