

sumption of the paramount right of the railway company over its right of way. Beyond question the street railway company has a right of action against persons who obstruct it. But no one would say that a motorman would be justified in shooting or even assaulting a man who placed himself or his dray on the track and refused to move. In the absence of a policeman the railway company's servant might doubtless lawfully use sufficient force to remove him out of the way, and afterwards he might be hailed before the Police Magistrate. But if the motorman cannot lawfully assault an obstructing pedestrian or drayman, can he lawfully run him down and kill him, just because whilst crossing the street according to his wont time out of mind, he fails to obey the peremptory summons of the motorman's gong?

What do the books have to say about this matter apart from the *Jones* case? As might be expected they have most to say in the United States in many of whose cities the chief purpose in life appears to be to get there; and least to say in England where people still manage to get about and yet respect the ancient rights of the man on his legs. Our own books, too, present a goodly number of instances.

1. Dealing first with *The English cases*.—

The *McAlpine* case³ has lately been put forward as authority for the proposition that the law of England is that a person is bound to look before crossing a railway track, and that failure to do so is per se negligence. But "that case lays down no such doctrine."⁴ The *McAlpine* case goes no further than to say what the law of England is not in respect of the rights of pedestrians at steam railway crossings.

In the only English tramway case on the point which I find reported in the books the Court of Appeal found on the facts that the pedestrian was wholly to blame.⁵ The report says:—

3. *McAlpine v. Grand Trunk Ry. Co.* (1913), 29 Times L.R. 674.

4. *Ramsay v. Toronto Railway Co.* (1914), 5 O.W.N. 556; and *Myers v. Toronto Railway Co.* (1914), 5 O.W.N. 587.

5. *Allen v. North Metropolitan Tramways Co.* (1888), 4 Times L.R. 561.