

of the warning signboard has no connection with the occurrence.

With regard to the finding that the excessive grade was a cause, the argument for the respondents is that as the engine struck the waggon about the point where the seat was, an extra second or two would have taken it clear of the tracks. The excessive grade, it is urged, caused the loss of at least that second or two. But if the risk of crossing before a rapidly advancing train, with only a second or two to spare, was knowingly taken, the conclusion of contributory negligence would seem to be inevitable. The jury have negatived this, and without assuming it, or assuming that the approaching of the train was not known to those in the waggon—which I find it very difficult to conceive in the circumstances of this case—it is impossible to support the finding that the defective grade materially contributed to the accident.

I agree in the view of the learned Chief Justice of the Common Pleas, that the finding that the statutory signals were not given is so greatly against the weight of evidence that it probably could not be sustained. But assuming that these signals were not given, if the deceased persons knew of the approach of the train before going upon the crossing, the lack of signals was not the cause of their being there when run down. The evidence for the plaintiff renders it almost impossible to suppose that they did not know that they were approaching the railway crossing. If they looked at all, they could not have failed to see the train, which was brightly lighted, and would have been clearly visible when nearly a mile up the track from any point on the highway within at least a quarter of a mile of the crossing. Neither can it be found, without guessing, that the persons killed were led, by failure to give the crossing signal, to expect that the train would stop at the nearby station before crossing the highway.

Whatever inferences might have been justifiable had the position of the derrick not afforded a sufficient explanation of the unfortunate occurrence, I am, with respect, of the opinion that to attribute it to the negligence of the defendants upon the evidence before us involves indulging in unjustifiable conjecture.

While two breaches of statutory duty by the defendants has undoubtedly been established, it must be the merest guess that either had any causal connection with the deaths in respect of which the plaintiff claims damages.