

The able argument of Mr. Riddell amounts to this: That had plaintiff looked east when he might have done so, he must have seen the backing train, and had he seen it he could and should have avoided the accident, and his neglecting to look was the cause of the accident. I by no means assent to this view, even if the facts in the present case could be so stated, because it might well be, in my judgment, that, although plaintiff might be guilty of some neglect in approaching the track, it is still for the jury to say whether defendants might not still have avoided the accident if they had discharged their statutory duty, the neglect of which was the *sine qua non* of the injury. But in the present case there were excuses offered for the omission of plaintiff to look east, after he had done so, in approaching the track.

The plaintiff puts it in this way: As he was approaching the crossing and about 20 rods distant, he saw a long train going east,—very fast—and looking to the west he saw a train coming into the station and stop there. He then looked to the east just before he got to the track and did not see anything.

Q.—Anything to obstruct your view? A.—Yes.

Q.—What? A.—There was the tavern and those trees that I could not see it.

Q.—Was there anything else? A.—I see cars over to this side standing there.

Q.—Then you got to the track and looked to the east?
A.—Yes.

He then looked to the west, his attention being drawn in that direction, by the steam which was escaping from the express train which had just come in, and so he passed on to the track without again looking to the east.

It was natural, I think, that plaintiff, having seen a train pass to the east and seeing a train standing on the track, should give his attention where the danger appeared,—to the west. At all events it was for the jury to say whether the reason given for not having seen the train was sufficient. It is for the jury to say, under all the circumstances, whether plaintiff exercised reasonable care: *Vallee v. Grand Trunk R. W. Co.*, 1 O. L. R. 224. The facts and the inferences from the facts in this case require to be pronounced upon. They are such as, it is not too much to say, might lead different minds to different conclusions. There is nothing in the