The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

C. A. Moss, for the defendants.

John MacGregor, for the plaintiff.

GARROW, J.A.:—. . . The line of the defendants' railway is laid along the west side of Yonge street, and the plaintiff, crossing on foot from the east to the west side, had reached and was upon the track when he was struck by a south-bound car and injured. The direction in which the plaintiff was proceeding . . . was south-westerly, but not enough to have prevented him from looking to the north without turning. He, however, did not look to the north, although he did to the south, and for the failure to look in both directions MacMahon, J., held that he was the author of his own injury and was not entitled to recover.

The plaintiff's reasons, such as they are, for not looking to the north, as well as to the south, were that he was familiar with the railway and with the usual mode of operation, and some 500 feet to the north . . . he had . . . seen the car which afterwards struck him, standing at a switch . . . where it was customary for a south-bound car to stand and allow the north-bound car to pass, and he inferred that that was to be the case on the occasion in question, and therefore concentrated his attention upon the south, from which direction he expected a car would speedily come.

The plaintiff is deaf. Some passengers on the car which struck him, fearing that he was going to cross the track without observing the car . . . ., called out to him, but he did not hear. And, if passengers could see him, it is not an unreasonable inference that the motorman, if at his post, could also have seen him; but whether he did or did not, does not, except in that inferential manner, appear. According to the evidence, the car was going at a high rate of speed—one witness says at 18 miles an hour. No gong was sounded, nor other warning given, nor was the speed slackened, so far as appears, as the car approached towards the plaintiff.

In these circumstances, the Divisional Court regarded the judgment of nonsuit as erroneous, and directed a new trial, a conclusion in which I entirely agree. . . . There was . . . some evidence proper to be passed upon by the jury both of negligence on the part of the defendants and contributory negligence on the part of the plaintiff. This, however, it is needless to say, is not at all equivalent to saying, or in any way indicating that, in my opinion, the plaintiff is entitled ultimately to succeed. What he is entitled