

It is a crossing accident case in which a farmer by the name of Crouch was killed, and the action is brought to recover damages for his death, on the ground that it was due to the negligence of the appellant company.

Three acts of negligence were found by the jury, to which they attributed the accident. They found, first, that the signboard which the statute requires a railway company to erect at every place where the railway crosses a highway, for the purpose of indicating that the railway is there, was absent; it had been there, but for some reason had been removed. They found, also, that the grade of the highway leading up to the track was a heavier grade than by the statute the railway company was permitted to have. And that there was an omission to sound the whistle or to ring the bell, as required by the Railway Act.

With regard to the second ground, that as to the condition of the highway, we think there was no evidence to go to the jury that that in any way caused or contributed to the happening of the accident.

With regard to the first ground, the absence of the warning board, it was very strenuously argued by Mr. Stone that that could not have caused or contributed to the happening of the accident. The accident happened about 7 o'clock in the evening of a winter's day and it was said that it was somewhat dark and it was argued that the signboard if there would not have been seen by the deceased or those who were with him in the wagon—there were two other persons, I think, in the wagon, and he was simply a passenger—and it was also argued that as the deceased and those who were in the wagon knew the locality well, they were not entitled to the same consideration as a stranger unacquainted with the locality.

We think that the jury were justified in inferring, if they thought that was upon the facts of the case the proper inference, that the absence of the warning board caused or contributed to the happening of the accident. For all that appears, some of the persons in the vehicle might have seen the warning board, and seeing it have stopped in time to have avoided the accident which unfortunately happened. The fact that they were well acquainted with the locality is only a circumstance to be considered by the jury, and not at all conclusive against the inference that they were led into the position of danger by the absence of the warning board. Just as in the case of the ringing of the bell and the sounding