

reasonable delay upon the track." The law in New Jersey,¹⁴ as laid down by the Court of Errors and Appeals is to the same effect: "But, as has been stated, the jury might have found the circumstances to have been those before stated, and upon those circumstances adjudged it impossible to acquit the motorman of gross negligence, for having deliberately, in broad day-light, with full opportunity to perceive that the plaintiff did not heed any signals of the gong, if it was rung, or any notice derived from the rumbling of the car, run the plaintiff down and did him the injury complained of. It could not be contended that such conduct was not negligent."

Then as to the doctrine of *Contributory Negligence*:—

The course of the cases in Canada indicates clearly enough that, even after the confirmation of the law as laid down by the Supreme Court of Canada in the *Gosnell* case in 1895, by the judgment of the Privy Council in the *King* case in 1908, the street railway companies did not abandon their contention as to paramount rights on the streets, and, as has already appeared in this article, they appear to have made some headway with their argument. This has been more especially so in the cases where contributory negligence has been found against the plaintiff. Some of the cases appear to be based upon the assumption that the presence of negligence on the part of a plaintiff, contributing to the accident, relieves the defendant company from observing the caution which they are bound to observe in the case of a person who is not negligent. I have nowhere found the doctrine of the courts on this branch of the law, as laid down in the leading judgments in this country, in Great Britain and in the United States more clearly stated than in the judgment of Mr. Justice Middleton in the *Sim* case¹⁵:—

"In cases of this kind it is, I venture to think, a mistake to seek for what is called primary negligence. There may be negligence in the first instance on the part of the defendant. If there is, the plaintiff has a duty to avoid, if possible, by the exer-

14. *Buttelli v. Jersey City, etc., Railway Co.* (1896), 59 N.J.L.R.

15. *Sim v. Port Arthur* (1911), 2 O.W.N. 864.