

. . . "I do not acknowledge the force of the reasoning which would convert an issue in fact into an issue in law, merely because there seems to be a complete preponderance of evidence upon the one side, or because there is no evidence on the other. In such circumstances the judge may speak strongly, and point out plainly what is the duty of the jurymen; and if they ignorantly or perversely disregard his counsel, and find without evidence or against evidence, the injured party has his remedy, and the law is prompt to rectify the wrong."

A later case decided in 1883 is *Davey v. London & South Western Ry. Co.*, 12 Q.B.D. 70. This was an action brought against a railway company for injuries received in crossing their tracks. The plaintiff admitted that before crossing he looked one way along the track but did not look the other, and that if he had done so he must have seen the engine approaching. The engine driver did not whistle. The plaintiff was non-suited at the trial.

Held, per Brett, M. R., and Brown, L. J. (Baggallay, J., dissenting), that the non-suit was right, as although there ^{was} evidence of negligence on the part of the defendants, yet upon the undisputed facts of the case the plaintiff had shown that the accident was solely caused by his omission to use the care which any reasonable man would have used.

Per Brett, M.R., at p. 72-3: "Therefore it seems to me clear that without the assistance of the jury, one must come to the conclusion that the plaintiff, according to his own showing, was guilty of a want of reasonable care, which was one of the causes of the accident. . . . Under these circumstances the learned judge at the trial was in my opinion justified in not leaving the case to the jury."

Per Bowen, L.J., at p. 76: "It seems to me to be important to draw the line clearly between the functions of the judge and the functions of the jury. It is not because facts are admitted that it is therefore for the judge to say what the decision upon them should be. If the facts which are admitted are capable of two equally possible views, which reasonable people may take, and one of them is more consistent with the case for one party than for the other, it is the duty of