

car, then the judgment should stand, but if it appears that there is evidence which would support such finding—that is of ultimate negligence—then that question has not been answered, and the case ought to go back for trial. It, therefore, remains to examine the evidence upon this point. It is apparent from the judgment that the trial Judge took the view that there was evidence which could properly be submitted on the question of ultimate negligence, and in my opinion, after a careful reading of the evidence, he was right in this view. I shall not quote all the evidence bearing upon this question, but sufficient, as I think, to shew that there was ample evidence to support a finding, had there been one, on the question of ultimate negligence; and, as pointed out by the learned Chief Justice, the strongest evidence supporting this view was given by some of the witnesses for the defendants. A fair summary may be found in the charge.

James Caines, with his wife, was waiting for a car at the north-east corner of Dundas and Margueretta streets. He says Herron was just about turning to come up Margueretta street. "His horse seemed to be about the south rail of the track, as far as I could judge.

Q. Which track? A. South track.

Q. When he was there, where was this east-bound car?  
A. It was east of us about a couple of car lengths. That is, the car was east of the east side of Margueretta street about two car-lengths when the plaintiff turned his horse up Margueretta street.

Q. What occurred next? A. Well, I saw Mr. Herron and he seemed to be straightening up to come up Margueretta street. To us he seemed to be coming across the track all right, but if the car had been going anyway reasonable Mr. Herron had lots of time to cross the track coming up Margueretta street, but before he had time the car struck him and he was upset. This witness is positive that the gong did not ring.

Q. Where was the car when it struck Mr. Herron as regards Margueretta and Dundas streets? A. It was west of Margueretta, on the west side of the street; very close to the west side of the street.

Q. Would you give us as clear an idea as you can of where the car was when it stopped? A. Well, when that car stopped the east end of that west bound car was about in line with the fence line of the west side of Margueretta street.