

pedestrian steps off the track the projecting corner of the car hits him and he is injured. What then? What is the law applicable to this state of facts?

Here again it is obvious, if there is to be a true equality of rights, that the pedestrian being first in possession of the point of intersection of the lines of advance, is entitled to cross without molestation from the street car. That he was first in possession is shewn by the fact that he had all but cleared the right of way when struck.

I am, of course, putting aside the cases where the pedestrian makes some movement or gesture from which the motorman is justified in inferring an intention to let the street car pass ahead. I am assuming a case where the pedestrian makes no sign at all from which the motorman can infer any intention other than to exercise his full legal rights. In other words, the question is, Is the pedestrian under a legal obligation to stop or to jump when the gong sounds? It is true that pedestrians have been acting largely on that assumption, both in respect to street cars and to automobiles, on the principle, I suppose, that it is not the part of wisdom to trade off one's limbs or life for the doubtful chance of a verdict in one's favour or in favour of one's widow. But that is not the point. We are discussing legal rights. The drayman didn't jump when the gong sounded. Was the pedestrian under any obligation to do so?

It is one thing to say that the pedestrian ought not to incur the risk of being killed in the event of the motorman being negligent or taking an unwarranted view either of the law or of the facts. But, of course, that is nothing more than saying that the pedestrian owes a duty to himself. Clearly the railway company will not be able to shelter itself behind that. The question is not, what duty the pedestrian owed to himself, but what duty, if any, he owed to the railway company? The pedestrian was not bound to take precautions against the possible negligence of the motorman.*

The argument of Mr. Justice Meredith is based on the as-

2. *Jones v. Toronto Railway Co.* (1895), 24 S.C.R. 582.