

aware of their proximity to the crossing—the very knowledge which the signboard was meant to give.

The evidence of the plaintiff and her witnesses who were questioned upon the point is, that, knowing them as they did, they cannot understand how it could be possible that the deceased Crouch and Toll could have come upon the crossing unawares, or have failed to notice the approaching train. The plaintiff's witnesses also depose to the presence of a large derrick lying about twenty feet south of the track on one side of the highway, but extending out to the travelled portion of the road. They say that horses coming to the crossing from the north would first see this derrick when at the top of the crossing, *i.e.*, upon the rails, when it would loom up almost directly in front of them as an apparent obstacle in the highway, presenting a surface about four feet square. This object had frightened many horses, including that of the plaintiff herself. Several of the witnesses who were accustomed to driving horses say that it would very possibly cause them to baulk and stand still, and the plaintiff herself expressed the opinion that the accident in question was probably due to this cause. The admissibility and evidentiary value of this latter opinion may be questionable, but it must not be forgotten that it was offered by the plaintiff as part of her case, the Electric Railway Company who was said to be responsible for the presence of the derrick being then also defendants. Upon the evidence, I rather incline to think that the proper conclusion would be that it is probable that the presence of the derrick caused the accident rather than any of the negligence found against the appellants. But it suffices that the evidence is equally consistent with the one view or the other. If so, to draw either conclusion, a jury must indulge in pure and unwarrantable conjecture.

I am, therefore, with the utmost respect, of the opinion that there was no evidence to go to the jury upon which they could reasonably conclude that any of the grounds of negligence found against the defendants—or all of them combined, assuming them all to exist—really contributed to the killing of Samuel Crouch and his daughter.

If the travellers knew of the proximity of the crossing—and it must be a pure guess to say that they did not, when it is proved that they were careful people, familiar with the locality, and there is such a body of evidence of another cause sufficiently accounting for the accident—the absence