

7th ed., p. 42), and is in any event quite distinguishable from the case in hand . . . ; in that case the child hurt was lawfully on the railway track on a level road-crossing, which should have been protected by a gate or stile for the special protection of people using the footpath, and the child was found injured at the very spot where the path and the rails intersected; and the child in the Exchequer case was but 4 years of age, while in this case the lad, over 8, was old enough to care for himself.

Here the lad was wrongfully trespassing in the yard of defendants, where he had no business or invitation to be, and he was killed over 400 feet from the place where he came upon the property of defendants. There seems to be no reasonable connection between the absence of a fence (even assuming that the statute requires this) and the death of the boy. He came upon the yards and strayed all over, picking up coal, and finally getting himself under or alongside the wheels of a freight car—which, being slightly moved in the operating of the railway, caused his death. He was old enough to know and understood he was in a place where he ought not to be, and where he had been admonished by his parents not to go.

It is not necessary to decide as to the statutory duty of the company at this place, but my strong impression is that there has been no violation of the law on their part, as against people trespassing.

The nonsuit was right, on the ground that no negligence is attributable to defendants which was the proximate cause of the accident.

It is necessary for the plaintiff to establish by evidence circumstances from which it may fairly be inferred that there is reasonable probability that the accident resulted from the absence of a fence at the place where the boy entered on defendants' property. This rule laid down . . . in *Daniel v. Metropolitan R. W. Co.*, L. R. 3 C. P. 216, stands affirmed by the House of Lords: *S. C.*, L. R. 5 H. L. 45. . . . The plaintiffs have not satisfied the onus cast upon them, and the judgment should be affirmed.

Cases shewing that the failure to fence (if it was evidence of negligence) was not the effective cause of the accident, may be here noted: *Mayer v. Atterton*, L. R. 1 Ex. 238; *Hughes v. McDonald*, 2 H. & C. 774; *Harrold v. Wahning*, [1898] 2 Q. B. 322; and *McDonell v. Great Western R. W. Co.*, [1903] 2 K. B. 331.