

dealing with the difference in the conditions at level crossings in England and New Zealand respectively, and showing that the danger in this country is much less than in England, His Honour went on to say,—

“I suppose it may be said that there are really only two kinds of level crossings in this country that are dangerous. One kind is the crossing you cannot see. A crossing of that description is a trap for passengers on the road, and the Railway Department cannot guard against this. The Railway Department, does, however, guard against the risk of accidents taking place by putting up warning-posts indicating first by a diagonal cross in a conspicuous place that the railway-line is being approached, and also, just on the crossing, there is a warning asking the driver [of the road vehicle] to stop and look out for the engine. . . . That is one kind of crossing. There is also another kind that is dangerous, and that is the crossing where the view is obstructed and where you have to cross it without being able to see the train at a safe distance, so that the train may be upon you before you are aware of its approach.”

There are very few of the first kind of level crossings in New Zealand, and, as mentioned by His Honour, notice of their situation is given by boards placed in a conspicuous position, and also, in practically every case where a real danger exists, bells or other warning appliances are installed. There are rather more of the second kind of crossing, and the difficulty at most of them has been caused by the erection of buildings and other obstructions to the view long after the railway was built. But the mere fact that the view at the crossing is somewhat obstructed does not necessarily render that crossing dangerous. The test is whether a driver of a vehicle approaching the crossing has a view of an approaching train at such a distance therefrom as to enable him to stop before entering on to the line in front of such train. Applying this test it cannot but be concluded that crossings of the second kind where there is any real danger are also comparatively rare, and at almost all of them crossing-keepers are employed, or warning appliances have been erected where this has been practicable. But it must not be forgotten that the fact that a driver of a vehicle cannot see the train earlier owing to obstructions is an argument that cuts both ways. The more difficult it is to see a train approaching the greater the need for every person using the road to keep on the alert right up to the time of entering on the crossing. When two vehicles meet at an ordinary intersection of roads one or the other has to stop till the other passes, and the position at a railway-crossing is only different in this respect—namely, that in most cases it is not practicable for the train to stop, for clearly the business of the railway could not be carried on if every train had to be so run that it could be stopped before passing over every level crossing. Even if this were physically possible it is commercially impracticable, and reason and economic considerations are clearly against any subordination of the railway traffic to road traffic at level crossings.

Another aspect of the matter of accidents is the suggestion that has been made from time to time in a general way—namely, that as (when this is the case) the road was constructed before the railway, the Railway Department is bound to furnish means of preventing accidents, and that in the absence of such means the user of the road is exonerated from blame. This argument, however, quite misses the point, and indeed, when properly enunciated, materially strengthens the Department's case. It is not the mere fact that the railway was constructed across a road that causes the accidents. The danger lies in the way in which the crossing is used. This is made quite plain when it is considered that before the advent of motor traffic on the roads accidents at level crossings were very rare indeed, and in almost every case in recent years the road-vehicle involved has been a motor. The method of working the railway has not altered—trains pass over the crossings in the same way as formerly, but the method of use of the crossings by the road-vehicles has altered considerably, and the facts show that the alteration is due to the introduction of motor-vehicles. The argument mentioned above should therefore (when properly stated) be that, as the railways used the crossings before the motors, the motor-users should provide means for avoiding accidents, and in the absence of such means the railways are exonerated from blame. Such means are in the power of every motor-driver, and consist in nothing more than the exercise of a sufficient degree of care. I mention this aspect in order to correct a wrong impression that is frequently created by the argument when stated in the form to which I have taken objection.

While giving expression to the foregoing views, however, I do not wish it to be understood that the Department is not alive to the desirability of taking measures in proper cases to reduce the risk of accident at level crossings. On the contrary, bells and other warning appliances have been installed at a large number of crossings, and other crossings are being equipped in the order of their urgency as finances permit and labour and materials become available. There are over three thousand public level crossings in New Zealand, and it is, of course, quite impossible (from a financial point of view) to provide overbridges or subways at every crossing. Level crossings must therefore continue to exist, and the Department has always been and is still willing to co-operate with local bodies in providing overbridges or subways where such provision is justified, and the Department has gone to very considerable expense in this direction. Indeed, in no case has the Department made any demur to bearing a reasonable proportion of the cost of providing such facilities for the purpose of closing public level crossings, the balance of such cost being furnished by the local bodies concerned (as representing the users of the roads).

I desire to emphasize that the entire prevention of accidents at level crossings must rest ultimately on the exercise of a proper degree of care by those using the crossings. Crossing-keepers, bells, and other appliances may assist in this direction, but the final appeal must be to the carefulness of the road-user, and in the absence of this factor all the safeguards that the Department may provide will be ineffectual to prevent accidents. Unfortunately, it has been found, both in New Zealand and