The new trial of this action directed by order of a Divisional Court, 20 O.L.R. 71, 1 O.W.N. 267, affirmed by the Court of Appeal, 21 O.L.R. 421, 1 O.W.N. 906, took place before RIDDELL, J., and a jury at Toronto.

The questions put to the jury and their answers were as follows:—

1. Was there any negligence on the part of the defendants which caused or helped to cause the collision? A. Yes.

2. If so, what was the negligence? Answer fully. A. We find with the evidence given the car should have been stopped in a shorter distance.

3. Was there any negligence on the part of the plaintiff which caused or helped to cause the collision? A. Yes.

4. If so, what was the negligence? Answer fully. A. He might have exercised a little more care.

5. Notwithstanding the negligence (if any) of the plaintiff, could the defendants by the exercise of reasonable care have prevented the collision? A. Yes.

6. If so, what should they have done which they did not do, or have left undone which they did? Answer fully. A. He should have seen the man sooner and sounded his gong continuously.

7. If the Court should, upon your answers, think the plaintiff entitled to damages, what sum do you assess as damages? A. $1,200.

John MacGregor, for the plaintiff.

C. A. Moss, for the defendants.

RIDDELL, J.:—I do not think that there is any evidence upon which the jury could properly find as they have done as against the defendants; but, assuming that the findings can be supported, it is apparent, I think, that all the acts of negligence found against them were of such a character as that the jury might have found them as primary negligence. Then the contributory negligence found took place at the same time as the negligence of the defendants—it was not followed by any act of negligence on the part of the defendants, either in point of time or logically. The negligence of the plaintiff was a continuing act up to the very instant of the accident, and consequently the accident was caused by concurrent negligence of both parties.

The case, in my view, is covered by Reynolds v. Tilling, 19 Times, L.R. 539, affirmed by the Court of Appeal, 20 Times L.R. 57. . . .