possession a rifle and ammunition therefor upon the streets of Smith's Falls.

J. A. Hutcheson, K.C., for the plaintiffs.

H. A. Lavell, for the defendant.

BRITTON, J.:—The plaintiff John Adam Moran is also an infant, of about the same age as the son of the defendant. While the son of the defendant was using the rifle to shoot at a mark, and permitting the infant plaintiff and other boys to shoot the same rifle, the infant plaintiff John Adam Moran was shot, causing him to lose completely his left eye. I asked the jury to answer certain questions, which they did, finding negligence on the part of the defendant, which negligence occasioned the accident, and injury to the infant plaintiff; and the jury assessed the damages at $300.

I put the further questions: "Was the boy plaintiff guilty of contributory negligence, that is to say, could he, by the exercise of reasonable care, have avoided the accident; and, if so, what was the negligence of the boy plaintiff which you find?" The jury answered that the infant plaintiff could, by the exercise of reasonable care, have avoided the accident—that he should have walked behind instead of in front. That answer can only mean that the boy plaintiff, at the time the firing was going on, walked in front of the firing line. There was no evidence that the gun was intentionally fired at the time of the accident. Upon the undisputed evidence, the gun was accidentally discharged when being held by the son of the defendant, and while a struggle was going on for the possession of the gun, between the son of the defendant and another boy—not the plaintiff.

If there was any evidence of contributory negligence which should have been submitted to the jury, the defendant is entitled to the benefit of the jury's finding. I am of opinion that there was no evidence that would disentitle the plaintiff to recover merely by reason of contributory negligence. The presumption should stand that this infant plaintiff is not responsible for negligence. To disentitle the infant plaintiff to recover, it would require to be shewn that the injury was occasioned altogether by his own so-called negligence.

The jury assessed the damages at $300—quite too small an amount if the plaintiffs are entitled to recover at all. Upon the facts, any solicitor advising that there was liability would think