

answers to both the 6th and 7th questions. The trial Judge not observing at the moment that the answer to No. 6 was struck out, said: "What you say in effect is that both these people were to blame, and that the motorman, after he saw the plaintiff was in danger, could not have stopped the car," to which the foreman answered "Yes." And his Lordship said: "I must endorse the record dismissing this action." His Lordship then said, "I had not observed that the jury had struck out the "No" in answer to question 6, but I have asked them if their idea was that the motorman, after he saw the position in which the plaintiff was, could not, by the exercise of reasonable care have avoided the accident. They said that was their view.

On the argument the notes did not contain the word "not" in the two places above indicated, but this has since been corrected by the reporter with the approval of the trial Judge.

The question of ultimate negligence was clearly submitted to the jury, but as the answers now stand the jury have not dealt with that question unless it be that their answer to the second question was intended to deal with the question of ultimate negligence.

As the trial Judge points out "in the pleadings there is no statement as to the specific acts of negligence which the plaintiff charges the defendants' servants to have been guilty of; but as I would gather from the course of the trial and from the observations of the learned counsel for the plaintiff, the case is put upon the ground that there was a duty resting upon the motorman of the car, which he was propelling, the east bound car, somewhere about Margueretta street, to sound the gong for the purpose of warning people who were about to cross, warning people who were in the lawful exercise of their rights, travelling on foot or in vehicles; that the motorman did not do that; that in consequence of that the plaintiff was lulled into a feeling of security, had a right to expect that no car was approaching from the east, and that he might have safely crossed the track." Upon that question so submitted the jury did not find against the defendants. That, of course, would have been original negligence had the jury so found. His Lordship then proceeds: "Then another ground is that when the motorman saw, as it seemed to me he admitted he saw, the plaintiff's horse on the track in the act of crossing he did not sound the gong then to warn the man." That also