value, that destruction not being damage such as might fairly and reasonably be considered as arising from the breach, or in contemplation of the parties. Judgment of MACMAHON, J., affirmed.

Du Vernet and *Courtney Kingstone*, for appellant. *Lynch-Staunton*, K.C., and *A. W. Marquis*, for respondents.

From ROSE, J.] SIM *v.* DOMINION FISH COMPANY. [May 14.

Master and servant—Defective plant.

As a fisherman employed by the defendants was dragging by its wooden handle, according to the usual practice adopted on the defendants' fishing tug, a heavy box of fish along the deck, the handle, which was made of a poor quality of wood, broke, and the man fell overboard and was drowned:—

Held, that the defendants were bound even at common law to exercise due care to furnish to their men material and plant in a sound and proper condition, and that they were liable in damages. Judgment of ROSE, J., affirmed.

Garrow, K.C., for appellants. *Lynch-Staunton*, K.C., for respondent.

From MEREDITH, C.J.] [May.

BROWN *v.* LONDON STREET RAILWAY.

Negligence—Contributory negligence—Jury—Trial—Form of questions.

When contributory negligence is set up in an action to recover damages for negligence, which is being tried before a jury, the plaintiff is entitled to a clear and distinct finding upon the point. In an action against a street railway company to recover damages, the jury, after finding in answer to questions, that the defendants were guilty of negligence, in running at too high a rate of speed, not properly sounding the gong and not having the car under proper control, and that the plaintiff's injury was caused by this negligence, said in answe to further questions, that the plaintiff was guilty of contributory negligence, in not using more caution in crossing the railway tracks:—

Held, that this answer was ambiguous and unsatisfactory, and, in view of the previous distinct answers, not fairly to be treated as a finding of contributory negligence.

Per OSLER, J.A. Instead of putting in such cases the question, "Was the plaintiff guilty of contributory negligence?" involving, as it does, both the fact and the law, it would be better to ask, "Could the plaintiff, by the exercise of reasonable care, have avoided the injury?" and to provide for the case of an affirmative answer by the further question, "If so, in what respect do you think the plaintiff omitted to take reasonable care?" Judgment of MEREDITH, C.J., reversed.

Gibbons, K.C., for appellant. *Hellmuth*, for respondents.