After setting out the answers of the jury, ANGLIN, J., said that he was unable to accept the contention that the "excessive" speed on the part of the plaintiff, found by the jury in answer to question 3, necessarily meant that he was travelling at a speed beyond the 15 miles an hour limit prescribed by sec. 11 of the Motor Vehicles Act. It was not impossible that this was the jury's view; but they might have meant to find that the plaintiff's speed, although less than 15 miles an hour, was nevertheless unreasonable having regard to the circumstances.

The answers to the 4th and 5th questions, taken with the failure to answer questions 10 and 11, created the real difficulty. The issue of primary negligence on the part of the plaintiff was covered by questions 2 and 3. Unless the trial Judge intended by questions 4 and 5 to cover the issue of "ultimate negligence," it was difficult to appreciate on what ground he held that the findings warranted a judgment dismissing the action.

But for the uncertainty as to the jury's opinion upon the question of "ultimate negligence" on the part of the plaintiff, resulting from the answers to questions 4 and 5, and the failure to answer 10 and 11, the 8th and 9th answers would seem to present a tolerably clear finding of "ultimate negligence" on the part of the defendant, such as would render him liable under the authorities, of which British Columbia Electric R.W. Co. v. Loach, [1916] 1 A.C. 719, and Columbia Bitulithic Limited v. British Columbia Electric R.W. Co. (1917), 55 Can. S.C.R. 1, are recent examples. But, notwithstanding the explanation of the 4th and 5th questions in the charge, the jury might have omitted to answer 10 because they thought they had in their answer to 4 already answered it in the affirmative.

In face of answers 8 and 9 and the omission to answer 10 and 11, the judgment of dismissal could not be sustained; but the jury's reason for failing to answer 10 and 11, their real understanding of 4 and 5, and the true purport and intent of their answers to 4 and 5, were too dubious to permit of the entry of judgment for the plaintiff.

The applicability and effect of sec. 23 of the Act, much debated at the bar, need not now be considered, in view of the result. The scope and purpose of this very special legislation might be made more clear by amendment.

The judgment dismissing the action should be set aside and a new trial directed. The appellant (the plaintiff) was entitled to his costs in this Court and in the Appellate Division, and the costs of the abortive trial should abide the result of the new trial.

On the new trial the attention of the jury should be directed to the rule of the road, to which no allusion was made in the charge at the first trial.