The jury answered the questions submitted to them as follows:—

"1. Q. Was the accident to the plaintiffs caused by the negligence of the defendant? A. Yes.

2. Q. If so, in what did such negligence consist? A. Excessive speed, and not proper warning.

3. Q. Was the car properly under control as it approached the crossing? A. No.

4. Q. Was the speed of the car excessive as it approached the crossing? A. Yes.

5. Q. Was proper warning given the plaintiffs by ringing the gong? A. No.

6. Q. Could Dart, by the exercise of reasonable care have avoided the accident? A. Yes, to a certain extent.

7. Q. Could any of the other plaintiffs, Tassie, Blair, or Norvell, have avoided the accident by the exercise of reasonable care? A. No.

8. Q. If Dart could have avoided the accident, in what did his want of reasonable care consist? A. By lack of judgment.

9. Q. What was the want of reasonable care, if any, on the part of the other plaintiffs, or any of them? (No answer).

10. Q. After the motorman ought to have become aware of the peril of the plaintiffs, could he by taking reasonable precautions have avoided the accident? A. Yes.

11. Q. What damages, if any, do you find the plaintiffs entitled to? A. Dart, $800; Tassie, $250; Blair, $25, and Norvell, $15."

And upon these answers, LATCHFORD, J., directed judgment in favour of the plaintiff.

The Divisional Court set aside this judgment and directed a new trial; holding that there was no evidence to support the tenth answer, and that the answers as to contributory negligence (6th and 8th), were not sufficiently explicit.

The appeal to Court of Appeal was heard by HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE LENNOX.

D. L. McCarthy, K.C., for the defendants.

D. Inglis Grant, for the plaintiff.

HON. MR. JUSTICE GARROW:—I agree with the Divisional Court in both particulars. And from the course of the argument before us it is apparent that of the two grounds, the second only calls for further observation here.