consequences of each in turn was something to which the jury should have had their attention directed.

Since the Loach case at least, the practice of leaving to the jury the question (as put in that case), "If both the company and the deceased were guilty of negligence, could the company then have done anything which would have prevented the accident?" should be followed in every instance where contributory negligence is alleged, unless the facts clearly exclude any inference of ultimate negligence. The point of time at which ultimate or second negligence may be said to arise is when the person at fault became aware, or should have become aware, of the danger of the other person.

The judgment below should be set aside and there should be a new trial; costs of the appeal should be paid by the plaintiff company, and costs of the former trial should be to the successful party in the cause.

New trial ordered.

FIRST DIVISIONAL COURT. NOVEMBER 12TH, 1917.

*VELTRE v. LONDON AND LANCASHIRE FIRE INSURANCE CO. LIMITED.

Insurance—Fire Insurance—Notice by Insurer Terminating Insurance—Service by Registered Letter—Tender of Unearned Portion of Premium by Enclosing Money in Letter—Letter not actually Received by Assured—Insurance Act, R.S.O. 1914 ch. 183, sec. 194, conditions 11, 15.

Appeal by the plaintiff from the judgment of SUTHERLAND, J., 12 O.W.N. 399.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

A. C. Kingstone, for the appellant.

R. S. Robertson, for the defendants, respondents.

HODGINS, J.A., read a judgment in which he said that among the defences was one setting up that the action was premature under sec. 89 of the Insurance Act, R.S.O. 1914 ch. 183, and sec. 194, condition 22. The respondents (defendants) had, since the argument, abandoned this defence, on terms.