Grand Trunk R. W. Co. v. McKay, 34 S. C. R. 81, was relied upon by counsel in support of his contention. But that case, in my judgment, does not conflict with the case just referred to. . . . But it is said that the judgment of Davies, J., 34 S. C. R. at p. 97, shews that Parliament by sec. 187 of the Railway Act vested in the Railway Committee, now the Railway Commission, the exclusive power and duty to determine the character and extent of the protection which should be given to the public at places where the railway track crosses the highway at rail level. That section reads as follows: "And the Railway Committee, if it appears to it expedient or necessary for the public safety, may, from time to time, with the sanction of the Governor in council, authorize or require the company to which such railway belongs, within such time as the said committee directs, to protect such street or highway by a watchman or by a watchman and gates or other protection." Having regard to the purview of the section and what is said by Davies, J., I think it clear that it has no application to the present case.

This is not the case of affording protection as indicated in that section, but whether or not, having regard to the peculiar circumstances of the case, notice should have been given by the passing hand-car of its approach.

Having regard to the interpretation clauses of the Railway Act, sec. 2, sub-secs. (t), (aa), and sec. 228, the argument at first glance seems to be complete that the hand-car is a "train" within the meaning of the Act, and that warning should be given under that section.

Mr. Osler sought to get rid of the logical effect of the interpretation clauses as imposing such duty, by urging that sec. 228 so manifestly had reference to an ordinary train that the context required a more limited meaning to the word "train" than would be otherwise indicated by the interpretation clauses. I am of opinion that this is so, and that the above clauses of the Act do not help plaintiff. There was, however, evidence of negligence in not giving warning, which, in my judgment, was proper to go to the jury.

The further question remains as to whether plaintiff has not precluded himself from recovering in this action by his own conduct.

The question of contributory negligence is for the jury. Defendant must, therefore, go further and shew that there