

acontradictory answer, so far at least as two jurors were concerned.

Even if that verdict, as rendered, had been received, I cannot conclude that it would entail a nullity; but in my opinion it was well within the powers of the learned trial judge to point out this apparent contradiction, and it was quite proper for him to ask the jury, if possible, to remedy, or cause to disappear that apparent contradiction. This they did upon consideration, and answered the third question and found, unanimously, that the accident was not due to the sole fault of the defendant. I certainly cannot find in this any ground to upset the verdict.

I now pass over the *third* ground of complaint to consider the second, as in my opinion the first and third grounds of complaint are entitled to the most serious consideration.

The *second* ground of complaint of, that the verdict is contrary to the proof. [*Question of fact.*]

I now proceed to consider the *first* ground of complaint. viz: to use the words found in the defendant's factum—that the judge wrongly instructed the jury, and did not leave the facts to the supreme decision of the jury, and that the defendant was seriously prejudiced by such.

In considering a question of this kind, it is reconized principle, that individual phrases or sentences in a trial judge's charge, cannot be considered, but that the charge as a whole must be considered.

The functions of the Judge as distinguished from that of the jury in these trials is well known. Our Code of procedure has seen fit to empower in two articles, in general terms, that principle. Art. 474 says it is within the province of the judge to declare whether there is any evidence, and whether that evidence is legal. Art. 475 says—