

that they believe plaintiff's evidence, and I think this answer may be rejected." . . .

While the answer to the hypothetical 4th question may be regarded as unnecessary and superfluous, it is at least doubtful whether it should, as a finding of fact, be entirely ignored, as there was certainly evidence quite sufficient to warrant it. The jury in effect say that from the first moment when plaintiff's danger should have been apparent to the motorman, the collision was inevitable. That is, in substance, a finding that from that moment there was no causative negligence on his part. Yet, in answer to question 2, causative negligence has been found against defendants, and in answer to question 3 the jury say that that negligence consisted in the motorman "not paying attention to his duties," etc. It follows that there must be ascribed to the jury the intention to find, and their answer to question 3 must be construed as in fact a finding, that before plaintiff's danger should have been first apparent to the motorman, the latter was inattentive to his duty in that he failed to use the appliances at hand to stop his car for the purpose of bringing its speed down to a proper rate, and of giving him that control of its momentum which the surrounding circumstances of danger required. Thus understood, this answer is quite consistent with the answer to the 4th question. . . .

Appeal dismissed with costs.

MEREDITH, C.J.

FEBRUARY 9TH, 1906.

CHAMBERS.

GILLARD v. MCKINNON.

*Venue — Change — Convenience — Witnesses — Expense —
Fair Trial—Jury—Undertaking—Costs.*

Appeal by defendants from order of Master in Chambers (ante 161) refusing to change the venue from Stratford to Cornwall.

Grayson Smith, for defendants.

R. C. H. Cassels, for plaintiff.

MEREDITH, C.J., dismissed the appeal, with costs to plaintiff in any event.