

under his control as to be incapable (a) of recovering at all against a negligent third party, or (b) of recovering where her husband sues with her. But the answers of the jury gave rise to difficulty in finding a proper basis to consider that problem.

By questions 1 and 2 the jury were asked whether they accepted the plaintiffs' account of what happened or the defendant's account. The jury answered both of these in the negative. But the questions which followed were all predicated upon the acceptance by the jury of one or other of these accounts, and were so expressed. Question 3 (a) was: "If you accept the plaintiffs' account, do you find the collision was caused by the defendant's negligence. The next two questions, 3 (b) and 3 (c), were subject to the same condition. Questions 4 (a), (b), and (c) were likewise based on the acceptance of the defendant's version, and were so expressed.

As the jury had negatived the acceptance of either of the accounts given of the accident by the respective parties and their witnesses, the answers were either useless or merely conveyed the information that, provided the plaintiffs' or defendant's version was accepted, the other party would appear to have been negligent, and this was equally void of legal import.

It was necessary, however, to read the charge of the trial Judge, as well as the questions and answers, so as to consider them in the light of the instructions under which they were given.

The entire discussion by the trial Judge of the negligence of the parties and the bearing of their acts upon the question of ultimate or perhaps contributory negligence was based wholly upon the truth of one or other of the versions of how the accident happened, and not upon the assumption that neither might be wholly correct. It was, no doubt, intended differently; but the basis was as stated, and the acts designated negligence by the trial Judge were those asserted as such by the plaintiffs and defendant respectively.

The jury were not in a position to deal with the real issues before them, and the bearing of the various events was not correctly placed before them.

The answer that "necessary caution not taken on approaching such a dangerous corner" was just the sort of vague statement that might be expected from a jury confused by the conflicting stories and without clear guidance as to negligence. That answer was not sufficiently clear to base upon it a definite finding of such negligence as would render either party liable. The result was all the more obscure because the jury failed to respond to the request of the trial Judge that they should specify the particular act which they considered negligent. The jury are bound to