Of course, if the finding had been simply, as it might have been, in favour of the plaintiff without reasons, we could not have interfered, for then the result might, notwithstanding the learned Judge's remarks about the jerk, have been attributed to either or to both causes.

And, if the evidence was reasonably sufficient to support the finding actually made, no objection having been taken at the trial, our proper course would probably be not to interfere. I incline to think, however, that if the jerk is excluded what is left of the plaintiff's case is too weak and insufficient to justfy a verdict of negligence against the defendants. And yet it would, in all the circumstances, be unfair to permit the defendants to take advantage of this view, in the face of the other objection to the charge to which I have referred.

The question, therefore, really becomes one of whether, in the circumstances, a new trial should not be granted. As has been recently pointed out, in this Court, the circumstance that an objection was not taken at the proper time is not necessarily fatal: see Brenner v. Toronto R. W. Co., 15 O. L. R. at p. 198; Woolsey v. Canadian Northern R. W. Co., 11 O. W. R. 1036. And upon the question of granting a new trial where the real question in issue has been imperfectly submitted to or has not been apparently passed upon by the jury, see . . Jones v. Spencer, 77 L. T. R. 536. . . .

It seems to me that the proper conclusion is, that, taking the remarks of the learned Judge as a practical withdrawal from them of the question of the jerk, the jury did not consider the evidence upon that question, and consequently, in bringing in the finding which they did, did not intend to imply that they found upon the other question in favour of the defendants.

I would, therefore, in all the circumstances, allow the appeal and direct a new trial; the costs of the last trial and of this appeal to be in the cause to the successful party.

MOSS, C.J.O., MACLAREN and MAGEE, JJ.A., concurred.

MEREDITH, J.A., was of opinion that the case on the jury's findings, and apart from them, was one of an accident for which no one could be justly blamed—a thing seldom but sometimes happening, and that the defendants' appeal should be allowed and the action dismissed. He was unable to agree that there should be a new trial, and thought the Court had no power to grant one.