On the notes as they stand, it would appear that the learned Chief Justice was referring to the first question and the answer already found—and not at all to the sixth and seventh questions.

Whether the jury so meant or whether they had changed their mind and thought the sixth question should be answered in the affirmative, may be doubtful—and if the case turned upon this, a new trial should be had.

But I do not think the matter of any importance in the present case. While it is the best and most convenient practice to submit in writing all questions which the jury are to answer, there is nothing in the Stat. (O. J. A. sec. 112) to compel this to be done; and I would consider that the answers of a jury to questions submitted orally from the bench are answers to questions within sec. 112. But it must be not tentative, but final answers that are to be so taken—consequently in this case we must, I think, look to the answers given after the jury returned the second time.

The result will be that the jury have found (1) negligence by the motorman (2) which would not have caused the accident had the plaintiff exercised reasonable care, but (3) "the motorman after he saw that the plaintiff was in danger could have stopped his car." Or if this be not the case, but the negligence referred to in the answer to the first question is the same as that referred to in answer to the oral question: then the case is as put by Mr. Justice Meredith in *Jones* v. *Toronto, and Y. R. Co.* (1911), 20 O. W. R. at p. 468, "no negligence on the part of the defendants causing the injury, negligence on the part of the plaintiff causing it, but . . . the defendants by the exercise of ordinary care might have avoided the injury." It makes no difference which way it is put—if the last finding of the jury be justified by the evidence, the plaintiff is entitled to his verdict.

The question is: Could the jury upon this evidence have been justified in finding that the motorman could and should have stopped the car by any exertion at or after "the point at which it became reasonably apparent that the plaintiff intended to proceed in his course across the track: per Garrow, J.A., *Jones* v. *T. & Y. R.* (1911), 20 O. W. R. at p. 464. Any negligence prior to that time is "met by the finding of contributory negligence": per Meredith, J.A., s.c. p. 468.