evidence shews that the engine-bell was not sounding immediately prior to the arrival of the train at Tecumseh road crossing and in so far as a danger whistle was not blown between the 550 foot range of vision immediately west of the place on the crossing at which the accident in question occurred." After the verdict had been so rendered, a discussion took place between the trial Judge and the foreman of the jury as to the meaning of it, and the foreman, interrogated by the Judge, finally said that he could not go further than saying that if the bell or the alarm had been sounded within the last 550 feet, that "*might* have prevented the accident."

The trial Judge directed that judgment be entered for the defendants, notwithstanding the verdict—basing that direction upon (1) the statement of the foreman of the jury above given, and (2) the conclusion that the action failed upon the whole evidence because the plaintiffs were guilty of contributory negligence.

There was error in both respects.

The statement of the foreman, especially when given in the course of a conversation, in which there was no time to weigh his words, ought not to be taken as overriding the deliberate written verdict of the whole jury. The verdict, once duly rendered, ought to stand. The onus of shewing clearly that it was rightly reversed rested upon the defendants; and all that they had shewn fell far short of any warrant for a reversal.

Because the railway enactments do not make it a duty to sound the whistle within the 550 feet is no reason why failure to do so may not be negligence; if it were a thing which, in the proper performance of their duties, competent drivers—it would be negligent to employ incompetent drivers—ordinarily would not omit, the omission of it was actionable negligence; and the jury were quite within their rights in finding that the appellants' injuries were caused by the neglect of the respondents *to sound the whistle, in the peculiar circumstances of the case.*

The learned Judge then discussed the question whether, the judgment for the respondents being set aside, there should be a new trial, and said that, in his view, the respondents had wholly failed to shew any legal right to a new trial; that injustice would be done if a new trial were ordered.

Reference to the decision of the Judicial Committee in Jones v. Canadian Pacific R.W. Co. (1913), 30 O.L.R. 331.

The learned trial Judge thought he was justified in directing judgment to be entered for the respondents, notwithstanding