was not even argued by counsel that there was negligence in not having a man in charge of the brake before the car was cut loose. There is no evidence to support either view—that it was negligence or that it would not have been negligence to have a man in charge of the brake—and what evidence there is is altogether against the idea that, if there had been a man in charge of the brake, it would have had any effect whatever. If the signal to the engine-driver could not have prevented it, through his stopping by means of his brake, it follows, as a matter of course, that the other man could not have stopped the car—it would have taken longer probably. Then I think, also, that there was no evidence whatever to support the answer to the sixth question. There was nothing that could have been done, upon the evidence—with the appliances that were there at all events—to have stopped the car in time to have prevented the accident after it was seen that the man was stepping on to this track upon which the shunting train was."

Counsel upon the appeal before us urged that, by reason of the form of the 6th question, the jury might have thought that they were precluded from finding negligence of the defendants before the deceased started for the track No. 3. It is plain that this is not so—the jury have found negligence of the defendants before this point of time—and it is equally clear that the trial Judge is right in confining all questions of "ultimate" negligence to the time from which the defendants or their servants could have anticipated any danger—any negligence before that time must be negligence covered by questions Nos. 1 and 2.

It is also plain that nothing appears in the evidence justifying the answer of the jury to question No. 6, or indeed to question No. 2. But, in any event, the answer to question 2 precludes a finding of any other negligence than that specifically found; it is not necessary to give authority for such a thoroughly established proposition. The jury then have found against the plaintiff upon whether the absence of the whistling, etc., caused the accident; and, even were the statutory duty to whistle to be held to exist under the circumstances, the jury have found it immaterial that such duty (if any) was not fulfilled.

It must be plain that the unfortunate man's own want of the most ordinary care contributed to the accident.

I think the motion must be refused, and with costs, if asked.

BRITTON, J., gave reasons in writing for the same conclusion.

FALCONBRIDGE, C.J., agreed that the appeal should be dismissed with costs.