tiffs, the answers to the remaining questions preclude the plaintiffs from recovering.

The deceased was warned to keep away from the shaft. He know that it was dangerous, and it was by reason of his doing that which he was warned not to do that he came to his death. He was not in his proper place. Had he been he would not have been killed. All this is found by the jury upon sufficient evidence.

Mr. Lewis strongly urged that there was not sufficient finding that the deceased was guilty of contributory negligence. The finding is stronger; it is in effect that he was the cause of his own death, and that with knowledge of the danger and warning not to incur it.

Plaintiffs' counsel strongly relied upon the language of Armour, C.J.O., in Moore v. Moore, 4 O. L. R. at page 174, where he says: "A person may be exercising reasonable care and in a moment of thoughtlessness, forgetfulness or inattention may meet with an injury caused by the deliberate negligence of another and it cannot be said that such momentary thoughtlessness, forgetfulness or inattention will, as a matter of law, deprive him of his remedy for his injury caused by the deliberate negligence of the other, but it must in all such cases be a question of fact for the jury to determine." In this case, as the Chief Justice points out, the jury negatived contributory negligence on the part of the plaintiff, finding that he used reasonable care for a boy of his age. There were no findings against him such as in the present case, and having regard to the facts of that case and the findings of the jury, I think it quite distinguishable from the present.

Deyo v. *Kingston*, 8 O. L. R. 588. In this case, where the deceased was on top of the car contrary to the rules of the company, of which he was aware, and was knocked from the car by coming in contact with the overhead bridge, it was held that the accident was caused by his own negligence and the defendants were not liable although there was not a clear headway space as required by the statute. This case was distinguished in *Muma* v. *C. P. R.*, 14 O. L R. See also *Findley* v. *Hamilton Elec. Light Co.*, 11 O. W. R. 48; *Markle* v. *Simpson Brick Co.*, 9 O. W. R. 436; in appeal 10 O. W. R. 9; *Grand Trunk* v. *Birkett*, 35 S. C. R. 296; *Bist* v. *London & Southwestern Rw. Co.*, 1907, A. C. 209. In *Barnes* v. *Nunnery Colliery Co.*, 1912, A. C. 44, a boy employed at the colliery jumped into a hoist tub in order to rise to his work.