E. G. Porter, K.C., and W. Carnew, Belleville, for plaintiff.

D. L. McCarthy, K.C., and W. E. Foster, for defendants.

TEETZEL, J.:—The jury, in answer to questions, found the negligence alleged against the defendants, and that the same caused the plaintiff's injury. To the question, "Could the plaintiff, by the exercise of reasonable care on his part, have avoided the collision?" the jury answered, "He might have."

Counsel for both parties moved for judgment; Mr. Porter, for plaintiff, citing Rowan v. Toronto R. W. Co., 29 S. C. R. 717, as authority that the above answer was not sufficient to disentitle plaintiff to recover. In that case, to the 5th question, "Could Rowan, by the exercise of reasonable care and diligence, have avoided the accident?" the jury answered, "We believe that it could have been possible." The Supreme Court held that "it was quite consistent with the wording of this answer that it might be most improbable that the accident could have been avoided by such reasonable care as the appellant was bound to take." The learned Chief Justice, at p. 720, said: "I regard this verdict as amounting to no more than as if the jury had said 'Perhaps it might have been possible.'" And at p. 721: "Combining the answers to the 3rd and 5th questions, I read them as if the jury had said that the defendants' negligence was the cause, though 'perhaps' the accident might have been avoided if the plaintiff had taken more care. Upon such an answer in terms there could be no doubt but that the judgment should have been entered for the appellant" (plaintiff).

I am of the opinion that the answer in this case cannot possibly be construed to have the meaning applied to the answer in the Rowan case, but, on the contrary, I think that the words "he might have," in their natural meaning, have the effect, when applied to the question, of saying that the plaintiff could have avoided the collision by the exercise of reasonable care on his part. There is nothing in the expression "he might have," in answer to the question propounded, which could be construed into meaning "possibly" or "perhaps," as the answer in the Rowan case was construed.

In my opinion, therefore, the effect of the answer is to find the plaintiff guilty of contributory negligence, in support of which there was abundant evidence, and the action must be dismissed with costs.