The answers of the jury are not to be divided up into primary, and intermediate, and ultimate negligence. What they find as the plaintiff's negligence is that "he might have exercised a little more care"—*i.e.*, I suppose, by looking again for the car; but as to the defendants they find that the car driver should have seen the man sooner, and have sounded his gong continuously, and that the car should have been stopped in a shorter distance. They also find that, notwithstanding the fault of the plaintiff, the defendants could by the exercise of reasonable care have prevented the collision.

The jury thus upon the evidence find an ultimate want of care on the part of the motorman, after the danger to the plaintiff became apparent, and after the plaintiff appeared to be unconscious of the danger. This is to be regarded as the decisive cause: the approach of the plaintiff was only the condition under which this injury became imminent, and was not the ultimate determining cause.

Put the case of a man standing on the track with his back towards an approaching car and for some reason unconscious of its approach, or the case of a drunk man staggering alongside the track, the negligence of the man would not warrant his being run down when he was seen or ought to have seen by the motorman, whose duty it is to be on the lookout. In the neat phrase of Coleridge, J., in Clayards v. Dethick, 12 Q.B., at p. 445, his want of care may have made him "liable to the injury but could not have occasioned it." The final negligence of the defendants, in these cases, has relation solely to a situation produced by the prior fault of the plaintiff.

The cases applied by my brother Riddell of Reynolds v. Tilling and Rice v. Rice are those in which there were concurrent and simultaneous negligence of equal character by both parties, in which the defendants had no possible opportunity of avoiding the consequences of the plaintiff's carelessness. The distinction between this case and Rice v. Rice is noted by Meredith, J., in Rice v. Toronto, 16 O.W.R., at p. 530. I agree with the view presented by my brother Middleton in Sim v. Port Arthur, 2 O.W.N. 865.

The same view of the law is supported by the highest authorities in the United States. See G.T.R. v. Ives, 144 U.S.R. 429 and Philadelphia v. Kleeth, 128 Fed. R. 820 (1906), where the federal Judge, Gray says: "No one should be relieved from liability from injury inflicted by him on another, by reason of the fact that that other has negligently exposed himself to a danger, if when that situation was, or ought to have been apparent to