The judgment of the Court (ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, JJ.A.) was delivered by

OSLER, J.A.—The defendants contend that there was no evidence of negligence on their part; that the plaintiff's own negligence was the cause of his injuries. They also complain of misdirection and nondirection on the part of the trial Judge, and they say that in any event the damages are excessive.

As regards the question of negligence, I am clearly of opinion that the learned trial Judge could not, with propriety, have withdrawn the case from the jury and dismissed the action. The facts proved were proper for their consideration, and it was for them to say whether they shewed negligence on the defendants' part, or contributory negligence on the part of the plaintiff.

As to the former, the measure of the defendants' duty is stated with sufficient accuracy in one of their reasons of appeal, viz., having regard to the circumstances of time and place, and the danger to be apprehended, they are required to take reasonable precautions, and to give reasonable warning of the approach of their cars.

The time was night—a dark night—the evening of a public holiday; the hour not very late; so that travellers were not unlikely to be abroad. The place was in or near a village; a public highway where people had the right to be walking or riding. The car was proceeding in an unusual direction, or rather in a direction in which the plaintiff had no reason to expect it would be going. It was going along very slowly, it is true, but for that very reason was making less noise and thus giving less warning of its approach. Yet the defendants gave no other warning. They excuse themselves for the absence of light by the failure of the electric current, but the jury might very reasonably have thought that this only made it the more incumbent on them to give notice of the approach of the car by sounding the gong, which might have been done. The plaintiff's accident was fairly and properly attributable to the absence of some such warning; unless it could be said that it was caused by his own negligence, or contributory negligence.

As to this the jury have found in his favour, and I think properly so. He was walking where, by law, he had the right to walk. He had reason to expect warning of the approach of a car, and he had no reason to expect that this particular car would have returned to the north switch. He might well have attributed such noise as he heard to the