

gence only, in not keeping a proper outlook, negligence which would be offset by the plaintiff's negligence is not doing likewise, with indeed much easier means of seeing the danger, and either not running into it or else turning away from it.

So that the plaintiff cannot hold his judgment upon the finding of the jury in answer to the tenth question.

It is much to be regretted that the jury were not required to give more definite and understandable answers to questions six and eight; the failure to do that makes the delay, cost, and worry, of another trial unavoidable.

It is quite clear that the jury did not find the plaintiff altogether not guilty of contributory negligence; that they were not able to say that much in his favour; but just what they meant in this respect, it is impossible, with any degree of certainty, to understand from the words used; and, as the Chief Justice remarked, their meaning ought not to be guessed at.

If the jury meant that by the proper exercise of his judgment the plaintiff might have avoided part of the injury which was caused by the accident, the damages should have been assessed accordingly, but there is nothing to indicate that they were.

As was held in the Divisional Court, the whole thing is quite too uncertain to support any just final adjudication on the plaintiff's claims.

And I am quite unable to agree in, or give effect to, the contention that, because there is a clear finding in the plaintiff's favour on the question of negligence on the part of the defendants, the plaintiff ought to recover unless there is a clear finding of negligence on his part too; it is not a case in which one or other of the parties must succeed finally now; that is the middle course of trying it over again and taking proper care to get conclusive findings; against which course neither of the parties, nor indeed the Court, can very reasonably complain, because it is only because they all failed in their duty to clear up the uncertainty when they should have done so, and when it could easily have been accomplished with delay or cost, that a new trial is necessary.

I would affirm the ruling in the Divisional Court; the respondents should have their costs of this appeal; but we are not now concerned with what the effect of this affirmance may be under the order giving leave to bring this appeal.

HON. MR. JUSTICE MACLAREN:—I agree.