MEREDITH, C.J.O., reading the judgment of the Court, said that the car by which the boy was struck was proceeding southward on the west track of the respondents' railway in Spadina avenue. Richmond street, which runs at right angles to Spadina avenue, crosses it, though there is a jog of 60 or 70 feet, the part of Richmond street which is west of Spadina avenue being that distance north of the part which lies east of the avenue. The accident occurred about 5 o'clock in the afternoon of the 12th September, 1919. According to the testimony of George Noble, he and some other boys were playing in the vicinity of the crossing; the car by which the injured boy was struck had just been passed by a car moving northward; the boy waited for that car to pass, and when it had passed went on to the west track, and was struck by the car that was going southward on that track. There was also evidence that no gong was sounded or warning given of the approach of the car going south, which was "going at a good speed."

The injured boy said that he looked but did not see the car that was approaching him, and "so I went across." Upon cross-examination he admitted that, when examined for discovery, he had said that he did not look before he went on the track, and said that that was true. There was not necessarily any inconsistency between the two statements. He might have meant by his answer on discovery that he did not look before he went on the east track, and by his statement at the trial that he did look before going on to the west track. The case was withdrawn from the jury because the boy admitted that he did not look, and because the trial Judge thought that negligence could not be imputed to the motorman when he did not look, and when he did look he was too late to do anything. It was apparently conceded upon the argument of the appeal that the view of the trial Judge was that the boy, on his own admission, was guilty of contributory negligence.

It was open to the jury to find that it was negligence on the part of the motorman not to have sounded his gong as he approached Richmond street and in crossing it, and not to have slackened the speed of the car at that point—there was evidence that he did neither.

The accident occurred in a business part of the city of Toronto, at the hour when workmen are leaving work, and the jury might have reasonably concluded that, in such circumstances, a proper regard for the safety of foot-passengers and others lawfully using the highway made it incumbent on the motorman to give warning of the approach of the car.

The boy was so young that at the time of the trial the Judge did not permit him to be sworn. The question of contributory negligence is for the jury, and it was for the jury to say whether, having regard to his age and intelligence, the injured boy had not