were given; that the deceased was not in his proper place; that he knew the danger; and that, had he been in his proper place, he would not have been injured.

I relieved the jury from further answering.

It is obvious that, unless the answers to the latter questions are sufficient to dispose of the case, there should be a new trial. It is not enough that a suggested appliance would have prevented the accident, if the absence of the appliance is not a defect.

But where the questions answered are sufficient to dispose of the case, there is no need of further proceedings: Findlay v. Hamilton Electric Light and Cataract Power Co., 11 O.W.R. 48, discussed in D'Aoust v. Bissett, 13 O.W.R. 1115; Dixon v. Ross, 1 D.L.R. 17 (Nova Scotia); and here I think such is the case.

I have again considered the law, and can arrive at no other conclusion than that at which I arrived in D'Aoust v. Bissett—followed as it has been in the King's Bench Divisional Court recently (King v. Northern Navigation Co., 24 O.L.R. 643, ante 172.)

The very recent case of Barnes v. Nunnery Colliery Co., [1912] A.C. 44, shews that, even under the Imperial Act, more favourable to the workman as it is than our own, there can be no recovery where the accident took place when the workman was doing a prohibited act. . . .

In the present case, as in that just mentioned, the dangerous act, while prohibited in form, was really "winked at," as was the case in Robertson v. Allan (1908), 77 L.J. K.B. 1072.

In addition to the cases already mentioned, the following are in point: Deyo v. Kingston and Pembroke R. W. Co., 8 O.L.R. 588; Markle v. Simpson, 9 O.W.R. 436, 10 O.W.R. 9; Grand Trunk R. W. Co. v. Birkett, 35 S.C.R. 296; Best v. London and South Western R. W. Co., [1907] A.C. 209; Brice v. Edward Lloyd Limited, [1909] 2 K.B. 804; Mammelito v. Page-Hersey Co., 13 O.W.R. 109.

It is strongly urged by Mr. Lewis that all the default of the deceased might be due to inadvertence, and that, in the absence of an express finding of contributory negligence, the plaintiffs might still recover.

This argument is completely met by a decision of the Chancery Divisional Court in Laliberté v. Kennedy, sustaining a judgment of Mr. Justice Teetzel at the trial, dismissing the action upon the plaintiffs' own shewing. In that case (I was of counsel both at the trial and in the Divisional Court) the deceased's work was to feed blocks to a circular saw, wholly unguarded. The blocks were placed upon a car, which itself ran to the saw