these cases the jury will probably assess damage at a figure lower than the true measure of the plaintiff's injury), or (*b*) the courts institute a further enquiry to ascertain whether, though both were originally at fault in rendering the accident probable, yet the defendant had a "last chance" of averting the accident which he ought reasonably to have taken, but of which he did not avail himself. Out of number four, therefore, there develops an enquiry. (5) Whether, notwithstanding the defendant's negligence and the plaintiff's contributory negligence, the defendant could by the exercise of reasonable care have avoided the result of the plaintiff's contributory negligence? If the answer is "Yes" then the plaintiff recovers according to the decision in the Privy Council (*B.C. Elec. R. Co.* v. *Loach*, 23 D.L.R. 4), and we have in this fifth problem what is called the "doctrine" of "ultimate negligence." The doctrine may be put into a somewhat shorter formula as follows: The defendant was negligent and thus injured the plaintiff, therefore the plaintiff may recover; *but* the plaintiff might by the exercise of reasonable care have avoided the consequence of the defendant's negligence, therefore the plaintiff cannot recover; *but* notwithstanding the plaintiff's contributory negligence the defendants might "by the exercise of care have avoided the result of that negligence;" therefore the plaintiff can recover. This is a fair statement of the result of the cases on this point and the application of this relentless logic (which might be carried even further) to complicated states of facts imperfectly remembered and described by flustered eye-witnesses sometimes makes the law look rather silly. It is a strong argument either for some general scheme of insurance against accident or for a division of the loss between people who are mutually at fault. Taking, however, the law as we find it some further discussion of this question may tend to clarify our ideas and perhaps to simplify addresses and charges to the jury. At the outset one might suggest that in the discussion of negligence cases too great reliance has been placed upon other judgments which are decisions upon questions of fact. Cases are cited as being on "all fours" with the one under consideration which contain no new statement of principles but which describe an accident that has happened in a somewhat similar fashion. Such cases are most dangerous because, though there may be coincidences, it is impossible that all the circumstances can be the same and the facts reported may not and probably were not all the facts upon which a verdict was arrived at. The law of negligence might be much simplified if we eliminated ninety per cent. of the reported accident cases. Upon this subject the judgment of Meredith, C.J.C.P., in *Sükoff* v. *Toronto Ry. Co.* (1916), 29 D.L.R. 498, 36 O.L.R. 97, is most apposite. He says at pp. 501-2: "Recent cases in the higher courts of England and in the Supreme Court of Canada are much relied on in this case . . . and we are impressively told that a jury have a right to draw inferences and that this case or that case is stronger than or as strong as or nearly as strong as some case decided in one of those courts; forgetful of these two things, that it is as old as the law that a case may be established on circumstantial evidence and that no case decided on its facts is an authority for a finding of fact one way or other in any other cases to be decided on its facts, however helpful the reasoning in it may be; that no two cases can be quite alike in all their facts and circumstances and that the one question in all such cases as this must be: Could reasonable men upon the evidence