burned by fire caused by sparks from the engine owned by the members of the syndicate?'' Their first answer to this was: ''We could not say definitely by the evidence produced, but we believe they were.'' After some discussion between the Judge, counsel, and jury, the latter retired and after some time returned, having amended their answer so as to make it state, ''We believe they were.'' . . .

[The Chief Justice then set out a further discussion between the Judge and jury, from which it appeared that the jurors did not agree as to the inference to be drawn from the facts, and that no ten were agreed upon a definite finding.]

The jury again retired and after some time returned with the answer ''yes'' to the question.

An affirmative answer rendered under such circumstances cannot be said to be satisfactory.

Looking at the evidence itself and the opinions expressed by the foreman and others of the jury, and noting their very evident hesitation and reluctance to accept it as justifying them in returning an affirmative answer, I think the defendants are entitled to the opinion of another jury upon this most material part of the case; and, looking also at the nature of some of the other questions and answers, there should, I think, be a new trial generally if the defendants desire it. In the event of the defendants desiring a new trial, the costs of the former trial and the appeal should be costs in the action. In the event of the defendants not seeking a new trial, the appeal should be dismissed; but, under all the circumstances, the parties should bear their own costs of the appeal.

MACLAREN, J.A., concurred.

GARROW, J.A., dissented, being of opinion, for reasons stated in writing, that the plaintiff could not sue his co-partners for his loss, and also that there was no reasonable warrant in the evidence to justify a finding that the plaintiff's damage was due to any negligence on the part of Dowson. He was in favour of allowing the appeal without costs and dismissing the action without costs.