to alight. It is not even clear that those in charge of the train knew that he had alighted, although he may have been standing, as he says he was, within sight of the conductor, who was doubtless busy with his own affairs and may not have observed him. And no one invited him to get on board. What he says occurred is that when the conductor came out of the station-house he said, "it is all right" to the engine-driver, and then gave the "high all" signal to proceed. The plaintiff waited on the edge of the platform until his car came forward, and then attempted to get on board. He made no attempt to use the steps, which, indeed, he says he never used, and he was, therefore, not injured because of their damaged condition. Nor, in my opinion, have the defendants' rules anything to do with the question. The train was not a passenger train, nor was the plaintiff in the position of a passenger; nor was he injured by any peculiar movement or operation of the train, whether contrary to the rules or otherwise, but solely by coming into contact with the truck; and the only question in the case, in my opinion, is, can he complain of that.

The maxim res ipsa loquitur, the application of which is practically confined to the question of the burden of proof, cannot, I think, be invoked in the plaintiff's favour. The plaintiff was bound to give reasonable evidence of two things: (1) the nature and extent of the duty, if any, owing to him by the defendants in the circumstances; and (2) the facts which constituted the alleged breach of such duty. Negligence, of course, presupposes a duty to take care, for, if there is no duty, there can be no negligence, however carelessly one may use his own property.

Now as to the duty, the facts, in my opinion, establish that the true position of the plaintiff was at the best that of a mere licensee. He came upon the platform, from his post of duty on the car, entirely for his own purposes. The duty of the owner of premises to a person in that position is a very narrow one, speaking somewhat generally, practically confined to two classes of things: one, that he shall not be exposed to a trap or other concealed danger; the other, that the owner shall not be guilty of what may be called acts of active negligence. In other respects, the licensee must at his own risk use the premises as he finds them: see Gautret v. Egerton, L. R. 2 C. P. 371; Bolch v. Smith, 7 H. & N. 742; Nightingale v. Union Colliery Co., 35 S. C. R. 65; Lowery v. Walker, 26 Times L. R. (C.A.) 108; Graham v. Toronto Grey and Bruce R. W. Co., 23 C. P. 541; Blackmore v. Toronto Street R. W. Co., 38 U. C. R. 172.

The accident occurred in broad daylight. The truck was plainly visible. How long it had been where it was, or who had