

The questions submitted to the jury and their answers thereto are as follows:—

1. Was the burning of the barn and its contents caused by fire which escaped from the locomotive of defendants? A. Yes.

2. Was the escape of the fire due to negligence of defendants? A. Yes.

3. What was the negligence? A. In not adopting the latest or modern improved smoke-stack.

4. What damages has plaintiff sustained? A. \$700.

In answer to the question of the clerk as to whether they have agreed upon their verdict the foreman answers for the jury that they have, 10 to 2.

His Lordship: When you say the latest or modern improved smoke-stack, what stack do you mean?

Juror: The straight.

The only question before us is whether there was evidence upon which the jury could reasonably have found as they did in answer to the third question.

The case was left to them very clearly and fully by the trial Judge, to whose charge no objection was taken by either party. As we said in delivering judgment on the former appeal, quoting the language of Lord Herschell in the *Port Glasgow and Newark Sail Cloth Co.'s Case (H.L.)*, 30 *Rettie* 35, the railway company are bound "to exercise their statutory powers reasonably, and, knowing that locomotive engines running along the line are apt to emit sparks, are bound to use the best practicable means, according to the then state of knowledge, to avoid the emission of sparks which may be dangerous to adjoining property, and if they do not adopt that reasonable precaution, they are guilty of negligence, and cannot defend themselves by relying on their statutory powers." I read this passage again because it seems to me to state concisely, with the necessary qualification, and without embarrassing superlatives, the obligation of the company with regard to the construction and equipment of their locomotives. The term "practicable" is, of course, an elastic one, bearing upon the rights of the company in respect of the efficiency of their engines on the one hand, and their duty to the public on the other. As Lord Ashbourne points out in the case just cited, there is no absolute standard to which companies are bound to conform, and, per Lord Maclaren, in the same case in the Court below, 19 *Rettie* at p. 614, "The question is one of degree in which common sense, rather than legal experience, must be the guide."

See also *National Telephone Co. v. Baker*, [1893] 2 Ch. 186, per Kekewich, J., at pp. 204, 206.