to the alleged negligence of defendants in not providing a steam-jet behind the rear driving-wheels. . . .

It is impossible to say what effect the part of the learned Judge's charge referred to may have had on the jury. They may, in finding in plaintiff's favour, have reached the conclusion that defendants were guilty of negligence in not having one or both of the appliances referred to attached to the engine. If so, as I have pointed out, there was no evidence upon which such a finding could properly be made.

On the ground of misdirection, the verdict and judgment must be set aside, and a new trial had. The costs of the former trial and of this motion to be costs in the cause, unless otherwise ordered by the trial Judge.

MEREDITH, C.J.—I agree with the judgment of my brother MacMahon, and have only a few words to add. . . .

Counsel for defendants, while not disputing that the doctrine of res ipsa loquitur was applicable to the occurrence which resulted in the injury of which plaintiff complains, contended that plaintiff was not entitled to invoke that doctrine in support of the action, because, as the fact was, his counsel had not been content to rest his case on proof of the occurrence, and the injury having been caused by it, and the presumption arising from this expressed in the phrase res ipsa loquitur, but had gone on to attempt to prove specific acts of negligence, and, as counsel contended, to prove the actual cause of the accident. No authority was referred to in support of this contention, and I am unable to see why, on principle, the course taken by plaintiff's counsel at the trial should have the effect which it is contended should be given to it, or why, if, on the whole case, defendants, upon whom the burden rested of overcoming the presumption of negligence which arose from the happening of the occurrence, had not made it to appear that it had happened without negligence on their part, plaintiff was not entitled to recover?

. . .

[Great Western R. W. Co. v. Braid, 1 Moo. P. C. 104, referred to.]

TEETZEL, J., agreed in the result.