

Now, that the great current was a sudden happening seems certain. The mere working of the "Kinmount's" screw during the earlier stages of the manœuvre had caused current, but nothing of an abnormal character. Robertshaw had apprehended danger by collision, but none by working of the screw. And, indeed, had it not been sudden and of short duration, it is impossible to suppose that it would not have been noticed by Robertshaw and the other men on the elevator. It is the very suddenness and shortness of the accident that absolves them from contributory negligence. So far as the evidence for the plaintiffs is concerned, there is really no proof that the danger was seen and appreciated by the "Mount Stephen" men in time to communicate with the elevator men. Wright, the manager of the elevator company, saw from the window of his office the water surging and immediately thereafter the cable broke. Mott, who was on the elevator, saw the cable break, but saw nothing that indicated that a current was coming from the screw of the "Kinmount." Robertshaw, who had been afraid of collision, thought that all danger was over when that danger was past, and was satisfied that the "Mount Stephen" was securely moored after she had been shifted, and he observed nothing abnormal till the cable parted. Cowel in the elevator saw the cable break and had observed nothing abnormal; and Garfield, who also saw the cable break, though he says he saw a current from the screw, is not examined at all as to whether there was any changing or sudden augmentation of that current. Then the case for the plaintiffs ends. The plaintiffs' counsel was really forced to rely entirely on certain portions of the evidence of David Bourke (the passage of Edward Bourke's evidence has evidently reference to the earlier stages of the manœuvre, when the "Kinmount" was passing the "Mount Stephen"). Their Lordships think this insufficient, because (1st) there is inextricable confusion in the testimony between the various stages of the manœuvre. Taken literally it would prove a dangerous current from the very beginning, a state of affairs sworn to by no one else and negated by the *res ipsa loquitur* of the behaviour of Robertshaw; (2nd) Bourke was very anxious to make out that he had warned Robertshaw a second time. The trial Judge disbelieved him, and it would, in their Lordships' opinion, be very dangerous and unfair to the defendants to reject that part of his evidence, and accept all else with which it was connected, as an accurate version of facts as to which the plaintiffs' own witnesses had made no case.