

are on your engine drawing this train. It is for you to see that it is all right for you.' Using the wording of rule 213, 'It has to be plainly seen by you that the track is clear to go upon the bridge and to cross over the bridge, and assuming it is your duty and that that is all right, then it is all right for you to go ahead.' That is the meaning, it is said, so far as this conductor is concerned, in answering from the rear end of the train the signal that was given to him by the engineer. Now, it is for you to say whether this conductor, in your opinion, was guilty of the negligence which caused the engineer under those circumstances to go forward with his train."

Divisional Court adopted the plaintiff's contention, and allowed the appeal. See 21 O. W. R. 236; 3 O. W. N. 659.

The appeal to the Court of Appeal, was heard by HON. SIR CHARLES MOSS, C.J.O., HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH, and HON. MR. JUSTICE MAGEE.

I. F. Hellmuth, K.C., and W. E. Foster, for the defendants.

J. R. Logan, for the plaintiff.

HON. MR. JUSTICE GARROW:—I am, with deference, of the opinion that the view taken by the learned trial Judge was correct. He might very well, in my opinion, even have granted the motion for non-suit made by the defendants at the close of the plaintiff's case; all the undisputed facts upon which his final judgment was based having then appeared.

But assuming that the case was one proper to be passed upon by a jury, I am quite unable to agree with the Divisional Court that it was permissible to ignore the finding of the jury as to the engineer's contributory negligence. There is no evidence that they did not fully understand and appreciate the exact situation. The charge had fully instructed them as to opposing contentions of the parties. Under that of the plaintiff there was no contributory negligence causing or helping to cause the accident. Under that of the defendants, the engineer's original negligence in passing and ignoring the semaphore continued, while the action of the conductor was a mere incident in bringing about the result.