

deceased when at work, of their approach, should have been employed. This meaning would seem more evident if the jury's answer to question 4B is read with the finding referred to. They there say that what made the system of shunting in use in Welland yard a dangerous one consisted in running without proper precautions in the yard; and, on being asked to define what proper precautions were lacking, they added, "running backwards without a flagman contrary to the rules." If they referred to the written rules, put in evidence, as I think they did, then no contravention of any of them was shewn, and the only rule specially referred to at the trial—rule 93, which requires trains not to move or occupy the left-hand track except by special order or under protection of a flagman in each direction—had been complied with by the special order of the yardmaster, who was himself on the returning engine. In that rule the flagman referred to is manifestly not a man on the engine; and nowhere throughout the rules do I find the word "flagman" referred to in that sense. If the jury referred to rules established by ordinary practice, as sworn to by the witness Wedge, the next friend of the infant plaintiffs, then equally the reference would be to a man on the ground. He does not refer to any rule as to engines or trains running backward. He does say that it was the recognised practice to have a man, usually the foreman, to warn the men working on the track of approaching engines or trains, or else to have a flag out which they should not pass; but he also says that, when a man was working by himself, he would have only himself to look out for the trains.

Taking it then as the meaning of the jury that it was negligence of the defendants to run without such a flagman on the ground, the finding would, I think, be unreasonable and unwarranted by the evidence.

The deceased Dell, a section-man, walking alone along the track, noticed a rail which he considered out of gauge, on the southerly or east-bound track, and he at once set to work alone to put it in gauge and spike it, and while at this work he was struck by a shunting engine running backward westerly on that track, which had passed him a few minutes previously on the same track at the rear end of an east-bound freight train, which it was assisting or "shoving" out of Welland. Neither the existing condition of the rail nor his work upon it in any way made the track impassable or interfered with traffic. There would be no necessity or even propriety in sending out a flag or a flagman to stop a train while a workman was walking off