

in the employ of the defendants, and who was killed on the 20th July, 1911, his engine having, because of an open bridge, gone over the bank and plunged into the Welland canal, carrying him to his death.

At the trial the following questions were submitted to and answered as follows by the jury:—

(1) Was the conductor, McNamara, who was in charge of the train, on the engine of which the deceased C. F. Smith was engineer, guilty of any negligence by reason of which C. F. Smith lost his life? A. Yes.

(2) If so, what was that negligence? Answer fully. A. Having passed the semaphore, if the conductor had full authority in the running of the train, he, Mr. McNamara, should have signalled the engineer to back up the train again, until the semaphore was lowered.

(3) Was the deceased, the engineer, guilty of contributory negligence, that is, could the engineer, by the exercise of reasonable care, have avoided the accident? A. Yes.

(4) If so, in what respect was the engineer so guilty? A. For passing the semaphore without permission.

(5) Apart from what may be said of negligence on the part of the conductor or engineer, was there any other negligence on the part of the defendants which occasioned the death of the engineer? A. No.

And the jury assessed the damages at \$1,800.

J. R. Logan, for the plaintiff.

E. Meredith, K.C., and W. E. Foster, for the defendants.

BRITTON, J.:—The evidence disclosed that the engineer passed, on his engine, the semaphore, which was up—against the train proceeding—and, having passed, stopped his engine at the water-tank, not disconnecting the engine from the train. Having taken water, he signalled that he was ready to proceed across the bridge, the bridge being only a short distance away. The conductor heard the engineer's signal and in reply gave to the engineer a signal to go on; and the engineer started. Apparently at that moment the bridge was being opened to allow a small tug to pass, and the engine went into the canal, and the engineer was drowned.

Upon the answers, each of the parties claims to be entitled to judgment.

The difficulty, if any, arises upon the answer to the 4th question. The negligence assigned to the engineer was that of pass-