

The jury upon the question of damages said they were of the opinion that the amount of such damages would be \$3,600, but they would only allow one-half of that sum, or \$1,800.

Britton, J., afterwards delivered judgment dismissing the action without costs. The view taken by the learned Judge is expressed in the following extract from his judgment: "It is argued that the death of the engineer was caused by the negligence of the person in charge of the train within sec. 3, subsec. 5, of the Workmen's Compensation for Injuries Act. The defendants' rule 22 puts the train entirely under the control of the conductor, and his orders must be obeyed except where they are in conflict with the rules and regulations or plainly involve any risk or hazard to life or property, in either of which cases all participating will be held alike accountable. Rules 52, 60, 213, and 232 were also cited. In view of these, and inasmuch as the deceased knew that the semaphore was up, and not lowered for the train of the deceased, he must be held equally responsible with the conductor; and so I must dismiss this action."

As appears in the learned Judge's charge, he had presented to the jury for their consideration the contention of the plaintiff that the result was brought about solely by the negligent signal to advance given by the conductor, and that any negligence of the engineer in passing the semaphore had then ceased to be operative, and the opposing contention of the defendants, which is thus described by the learned Judge: "It is said in argument, in reference to him, that his signal only meant, and it would only be understood by the engineer, that it was all right at his end of the train. 'You 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."

The Divisional Court adopted the plaintiff's contention and allowed the appeal.

I am, with deference, of the opinion that the view taken