

condition or the accident would not have happened. The latter, it is true, also criticised the original construction of the controller. But he admitted that it was of standard make, and of a type in general use, and was quite unable to point to a case in which his ideas had been carried out. So that if the controller had been otherwise perfect this criticism would, I think, have been harmless.

But the controller was not as originally built but had been "overhauled" by the defendants, which is explained as taking it apart and putting in new parts in the place of parts which had become worn.

The circumstances seem to me to bring the case within the principle often acted upon, laid down in *Scott v. London Dock Co.*, 3 H. & C. 596, p. 601, that "where the thing is shewn to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendant that the accident arose from want of care." There is, as I have pointed out, practical agreement in the evidence of the experts that the accident was a very unusual one, and one that could not have happened if the controller had been in proper condition. It was certainly under the care and management of the defendants' servants. It had at one time, not long before the accident, become so worn out that it had to be rebuilt, and the onus under the circumstances was, I think, upon the defendants to shew that that had been properly done, an onus not in my opinion discharged by the evidence which was given.

Then as to the inspection—inspection from time to time of the controller is admittedly necessary, and inspection of a kind was, upon the evidence, probably had not long before the accident. But it too, as in the case of the evidence as to the rebuilding of the controller, was of an unsatisfactory, general nature, quite insufficient to convince that such an inspection had recently been had as would probably have discovered the defects if there were any.

Under these circumstances it seems to me that both questions were properly for the jury, and that the appeal should be dismissed with costs.

HON. MR. JUSTICE MACLAREN:—I agree.