

The \$26 was struck out and the damages assessed at \$1,980, for which judgment was directed to be entered.

In his charge to the jury the learned Chief Justice pointed out that counsel for the defendants conceded "that as far as what took place on that forenoon, Teasdale was the plaintiff's boss, that is, he was in a position of superintendence to the plaintiff." And again, "that as to this particular job, however it might be ordinarily, Teasdale was the boss and Brulott under him."

After dealing with the first four questions, the learned Chief Justice proceeded, "Then you will consider seriously the 5th and 6th questions, 'Or, were the plaintiff's injuries caused by his own want of care,' and 'If so, wherein did his want of care consist?' The strenuous argument presented to you upon that branch of the case is, that while it was true that Teasdale was the superior person, the person in a position of superintendence, Brulott ought to have had regard for his own life and safety and have refused to go on without having proper protection, or have gone a car and a half length to the roundhouse or shop where these flags were stored and got one for himself. That is a matter for you to consider seriously; there is no doubt that he was not under any compulsion, there is no evidence that he said, 'I will not go on without that flag,' and that he was ordered to go at all hazards; the evidence is not that; the evidence is that he acceded to the persuasion of Teasdale, and so remained in this position of danger. Does that amount to negligence on his part? I mean that kind of negligence which is the cause of his injury and which deprived him of the right to recover? Mr. McCarthy calls your attention to the fact that the very beginning of the conversation about the flag was Teasdale telling him that there was no flag, to be careful and listen for any noise of anything approaching. So that is his argument. He says, granting that Teasdale was negligent, was Brulott right in taking the matter into his own hands and running his own risk? It is for you to judge." And again, "You will have to just follow this, was the injury caused by his own want of care, or was it caused by the want of care of a person in superintendence? It is the negligence causing the accident which you have to consider. It is the proximate cause of the accident. I cannot make it any clearer, if I tried to refine upon it. It is whichever way you think it is, whether it was his own carelessness or the negligence of the defendants in the person of Teasdale."

No objection was taken to the charge.

The defendants now give as reasons for appeal that Teasdale was not a person to whose orders the plaintiff was bound to con-