

Upon the answers given by the jury, I would direct a verdict to be entered for the plaintiff for the damages assessed at \$1,800.

The first answer declares that the engineer (represented by the plaintiff) lost his life by the negligence of the conductor of the train; and the details are given in the second answer, that the conductor should have signalled the engineer to back up the train again (*i.e.*, from the water-tank, to which point the engineer had taken the train) until the semaphore (which the engineer had passed) was lowered.

They next find that the engineer was guilty of contributory negligence because of his passing the semaphore without permission. But this last finding was clearly wrongly styled contributory negligence. It was a primary act of negligence which had expended itself when the fore part of the train reached and stopped at the water-tank. There came an interval of several minutes when the train was at a stand-still. Next and finally the train was set in motion by the engineer, in response to the conductor's signal to go ahead, when he saw that the semaphore was against him. The engineer had signalled the conductor that he was all ready (*i.e.*, that sufficient water had been taken), and thereupon came the conductor's signal to go ahead, which he obeyed to his own destruction. But the jury have exculpated him from blame in so going forward, and have put all the responsibility for that act on the conductor.

I think the learned Judge erred in applying the company's rule 22 as absolutely fixing equal responsibility on the two officers, conductor and engineer. This involves finding that the engineer should have seen the danger and refused to obey the signal to go: but, this aspect of the case was laid before the jury, and they have found that the engineer acted reasonably and with proper precaution when he saw the green lights of the bridge (which indicated all was right to go across), and then went ahead after the signal from the rear given by the conductor. The duty of the engineer is to obey the orders of the conductor; and this the jury find that the engineer rightly did at the critical moment, and thus in effect find that he did not violate the terms of the rule of the company. It cannot be said that this finding is contrary to the evidence; and, therefore, I do not think the strict letter of the rule can be invoked to neutralise the decision of the jury on the facts. The duty of the engineer is to obey the orders of the conductor; and this, the jury find, he rightly did.

The appeal should be allowed and judgment entered for \$1,800 with costs of action and of appeal.