

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. In what respect was the engineer Smith so guilty? A. By passing the semaphore without permission.

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

6. If so, what negligence do you find these bridge tenders were guilty of? A. Nothing."

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.

Hon. Mr. Justice Britton, afterwards delivered judgment dismissing the action without costs, see 20 O. W. R. 654; 3 O. W. N. 379. 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, sub-sec. 5 of the Workmen's Compensation for Injuries Act. 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 deceased, he must be held equally responsible with the conductor, and so I must dismiss this action."

As appeared 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