

What was meant by not using blocks was, that the defendants had not adopted that mode of having the work done. There seem to have been blocks in the work shop, but they had never been used by the workmen in this work. "Horses" were provided and used, which, it is admitted, afforded sufficient protection to workmen whilst work was being done upon the tank; and "jacks" were used to raise it up so that the horses might be placed under it, and for removing the horses and lowering it upon the trucks again when the work upon it was done.

The accident happened after the horses had been removed, and while the jacks were in place in the work of replacing the tank upon the trucks.

There was no reasonable evidence of any negligence, in any one, in not blocking up the tank at that stage of the work. The blocks, obviously, could not be employed while the work of lowering the tank was going on; but the extraordinary proposition is made, and supported by the finding of the jury, that they should have been used for the few seconds whilst the king-pin was being inserted, and again immediately removed so that the lowering of the tank upon the truck could be continued: and this in the face of the evidence that the method in question was that generally, if not invariably, used by all railway companies, and one in which the plaintiff has been employed for 6 years—and yet one in regard to which no one seems to have been able to give evidence of a single instance of accident or of any inconvenience.

In these circumstances, it seems to me that it would be very like a farce if the defendants had required their servants to build up a support of blocks, only to take it down again almost immediately, and a farce in which the plaintiff and the other servants of the defendants would have declined to take part, or else soon have allowed to drop into disuse.

The accident was very plainly caused by the misplacing of one of the jacks. The plaintiff and his helper, a new hand, were the only persons engaged in the work. The plaintiff was a workman of long experience in the work, and enjoying extra pay because of his long service and skill. If he had taken the pains to see that the jacks were in proper position, the accident would have been avoided.