found fault with; but, whichever he did first, in the moment of the explosion and consequent fire, he could hardly be accused, reasonably, of negligence. In my opinion, there is no reasonable evidence to support this finding; and I desire to add that I hope all "competent" men may act in as courageous a manner upon such an extraordinary occasion of—if judged by the panic of the passengers— very considerable cause for alarm, as this man, found by the jury to be "incompetent," did.

On the other branch, as well, there must, I think, be a new trial, because of the improper rejection of evidence. The plaintiff made a primâ facie case of neglect on the part of the defendants to take reasonable care that the car was road-worthy and free from the defect which caused the accident. The defendants then proceeded to meet that case by testimony as to examinations to ensure road-worthiness and freedom from such defect; but, upon objection made on the plaintiff's behalf, the evidence in question was rejected, and rejected upon an erroneous ground, as is now generally admitted. The witness could not from memory alone testify to an inspection shortly before the accident, it would hardly be possible that he could; it was then proposed to put into his hand a report, signed by him in the usual course of his work, shewing that the car had been examined at that time, but, upon such objection, that was prevented. If, looking at the report, the witness could have said: "That is my report, it refers to the car in question, and shews that it was examined at that time, and, though I cannot from memory say that it was then examined, I can now swear that it was, because I signed no report that was untrue, and at the time I signed this report I knew that it was true," that would, of course, be very good evidence, but the defendants were not allowed to get that far; and so the defendants are entitled to a new trial.

MACLAREN, J.A., agreed that there should be a new trial, for reasons stated in writing. He considered that it would not be in the interests of justice that the case should be finally determined on the evidence admitted; there should be a re-trial in order that the tendered evidence might be received. He referred to Phipson on Evidence, 5th ed., pp. 466, 467.

MOSS, C.J.O., GARROW and MAGEE, JJ.A., agreed in the result.

Appeal allowed and a new trial directed; costs of the appeal to be costs to the defendants in any event; costs of the former trial to be costs in the action.