from the jury, upon the ground that only one inference, and that unfavourable to the person charged with the negligence, could be drawn from the evidence. The cases in which such a course ought to be taken are few; and, in my opinion, this is not one of them. . . .

In the circumstances of this case, as I have said, there was, in my opinion, evidence to go to the jury. . . The omission of the employees of defendants to take steps, which not always, it is true, but, if some of the witnesses were believed by the jury, generally, were taken when the engine approached, to take out the train after it had been loaded, may have been thought by the jury to have led the deceased to believe that he incurred no danger in passing through the space that had been left between the 9th and 10th cars. There was also some evidence that, owing to the narrow space between the line of posts and the cars, the deceased's opportunity for seeing the engine and tender as they approached was a very limited one.

There must, however, I think, be a new trial. If, as it may well be, the jury meant by their answer to the 3rd question that one of the acts of negligence of which defendants were guilty, which they designate "improper positions of officials," was that the conductor of the train, and not the engine-driver, was in charge of the engine and tender when they were being backed up, there was no evidence whatever to warrant that finding—for, assuming the fact proved, there was nothing to shew that the conductor was not competent to manage the engine, and such evidence was essential to justify a finding against defendants of negligence.

What other act of negligence was intended to be specified in the answer to the 3rd question by the words "not blowing whistle at crossing," is also open to doubt. If the answer is taken literally, there was, I think, no evidence to support it, for there was, in my opinion, none given to shew that the statutory crossing signal was not given at the proper place before crossing Bridge street. There was, no doubt, evidence that no warning was given of the approach of the engine either by bell or whistle, but that evidence was not directed to the statutory warning required to be given when approaching a highway crossing, but to such a warning as it was said the employees of defendants were accustomed to give that the engine was approaching for the purpose of pulling out the loaded cars, and, for all that was said by any of the witnesses, the statutory signals may have been properly given.

. . .

Although it may be urged that the jury have impliedly negatived the other acts of negligence complained of, and