

jury upon which they could reasonably find that the breach by the company of their statutory duty caused, in the sense already mentioned, the death of the deceased. Many conjectures may no doubt be indulged in as to how it came about that neither Weymark nor Jones sounded the whistle, or applied the brakes they had at their command, or made any communication to the engine-driver, but disregarded all the signals, and allowed the train to steam into the station and collide with one of the trains awaiting them. But is not the most probable reason this, that Weymark was unskilled in, and unfit for, and without any experience of, the difficult work he was set to do? His eyes were in truth the eyes of the engine-driver and fireman. These latter might as well have been actually blind for all that their eyesight enabled them to see. Weymark's ordinary occupation, repairing the permanent way, afforded no training for work such as this; he apparently had no other training, at least no other was proved to have been undergone by him. He was not proved to have been considered in any way fit for the work. He was not tested, and, was it not reasonable for a jury to have believed that he was not tested because he could not pass the test?—No reason was given why he was not subjected to the test. In *Ayles v. South-Eastern Railway Company*, L. R. 3 Ex. 146, a train belonging to the defendants was, while stationary outside Cannon Street Station, run into by another train. Several railway companies had running powers over the part of the defendants' line at which the collision occurred. There was no proof as to whether the moving train belonged to, or was under the control of the defendants, but it was urged that no train could pass over their line without some arrangement with them, or by their authority and subject directly, or indirectly, to their control. It was held that in the absence of evidence to the contrary it must be held that the train which caused the accident belonged to or was under the control of the defendants. Baron Martin, at p. 149 of the report, said:—

“The collision which did take place ought not to have taken place. Then what is the presumption as to the ownership of the train which caused the mischief? I think the jury might properly say that it was, in the absence of evidence to the contrary, under the control of the company to whom the line belonged. The fact is not ‘proved,’ perhaps, but ‘proof’ of a fact is one thing and ‘evidence’ of it to go to a jury is another.”