a conflagration, than those which escape through the mesh of the bonnet. It is proved beyond doubt that, on the 27th May, 1879, the cone of the locomotive No. 5 was so constructed that its lower edge was two inches above the level of the bed upon which the bonnet rim was rested. Accordingly, in the course of the appellants' argument upon this point, the real and the only question came to be, whether there was evidence to show that, on the 27th May, 1879, the connections between the bonnet rim of No. 5 engine and its bed were so defective as to admit of fire escaping through some space between them, In the opinion of their Lordships there is evidence from which the jury might fairly draw the conclusion that fire did escape in that way, and did ignite the respondent's lumber. Their Lordships do not, however, consider it necessary to enter into a detailed explanation of their reasons for holding that opinion, it being quite sufficient for the disposal of this part of the case that the appellants have utterly failed to satisfy their Lordships either that the Judge should have withheld the case from the jury for lack of evidence, or that the findings were either perverse or unreasonable.

There still remain for consideration the objections taken by the appellants to the administration of evidence for the respondent, and in particular to the admission in evidence of the entry made by Burns, the driver of No. 5 engine, in the report book kept at the defendants' workshops at Brockville, on the 30th May, 1879, three days after the fire. The entry admittedly related to engine No. 5, and it contains *inter alia* this sentence: "Bottom rim of bonnet in stack wants making tight." It appears to their Lordships that an entry in these terms, applicable to the locomotive which was alleged to have caused the fire, could not, in the circumstances of this case, be regarded as immaterial evidence; and, in that view, the question whether it was wrongly admitted becomes of importance. The appellants objected to its admissibility on these grounds: (1) that evidence of the state of the engine on the 30th May could not be competently admitted as tending to show what was its condition on the 27th May; (2) that Burns could not on the 30th May bind the company by any admission, direct or indirect, as to the condition of the engine on the 27th May; and (3) that the entry was objectionable, because it went to contradict statements made by Burns, as a witness, with regard to the state of the engine on the 30th May, and that it was not tendered or admitted in terms of section 27 of the Revised Statutes of Ontario, cap. 62. As to the first of these objections, their Lordships are of opinion that it was competent for the respondent to give evidence as to the condition of the engine on the 30th May, as throwing light upon any structural defects arising from imperfect design, or from disrepair, which might have existed on the 27th May, it being open to the appellants to prove that any defects, appearing at the later of these dates, were due to intermediate causes. Their Lordships are also of opinion that the entry was not tendered or received as an admission by the company in regard to the condition of the smoke-stack on the 27th May.

What the respondent was endeavouring to prove, when the entry was put in evidence, was the condition of the smoke-stack of locomotive No. 5 at the time when it was taken into the appellants' workshops for repair, on the 30th May. It has been proved that it was the duty of Burns to take his engine to the workshop for repairs, and that it was his duty to enter in a book, kept there for the purpose, the repairs needed, for the information and guidance of the workmen. Had he given verbal instructions to the workmen, it would have been clearly competent to ask him what the instructions were. He was the agent of the appellants in giving such instructions, which were part of the *res gestæ* of the 30th May, and the appellants could not have objected to his telling the jury what instruction he did give, on the ground that these were inconsistent with something which he had already deponed to. There is no difference in principle between asking the witness to state the verbal instructions which he gave, and putting his written instructions in his hand and asking him to read them. Such an entry as that in question, when it is so put in evidence, cannot be regarded as a mere statement or narrative of fact; it was an instruction given, an act done, by Burns, in the ordinary course of his employment as an engine-driver of the appellant company. Their Lordships are accordingly of opinion that the entry was legitimately used as evidence at the trial, and they concur in the observations which were made upon this point by Chief Justice Hagarty in the Court of Appeal.

The only objection remaining to be noticed is that which was taken by the appellants to the admission of evidence that the locomotive No. 5 was in use to throw fire. The argument addressed to their Lordships, in support of this objection, really went to the value, and not to the admissibility of the evidence; and their Lordships have no hesitation in holding that the objection is not well founded. The admissibility of evidence depends upon its character, and not upon its weight; and their Lordships cannot doubt that