before it was produced to the witnesses." That case went on appeal before the Privy Council, 4 Moo. P. C. C. 265. The judgment given is one of a court deserving the highest possible consideration, for it was composed of the Lord Chancellor (Lord Lyndhurst), Lord Brougham, Lord Denman, Lord Abinger, Lord Campbell, Mr. Baron Parke, the Vice-Chancellor Knight-Bruce, and Dr. Lushington. As the judgment is short, I will read it in its entirety: "In this case we do not think it necessary to decide the question as to whether or not the instrument was signed before the witnesses were called in; but, assuming that it was signed by deceased before the witnesses were called in, we are of opinion that the mere circumstance of calling in witnesses to sign, without giving them any explanation of the instrument they are signing, does not amount to an acknowledgment of the signature by a testator We are all of opinion that the instrument was not signed in the presence of the witnesses. The cases which have been referred to under the old law, we think do not apply. We affirm the sentence of the court below, and give costs, both here and below, out of the estate." That decision seems to set at rest any doubts which might have arisen in consequence of the judgment in the case of *In the Goods of Thompson*; it was the decision of a court of appeal in 1844, and this court is bound by it.

In the present case there was no evidence whatever as to whether the signature of the testator was on the paper at the time of the attestation, and even had it been there, the fact that the witnesses were merely called in to make their marks without any explanation being given of the nature of the document, is sufficient, according to the judgment of the Privy Council in *Ilott* v *Genge*, to show that there was not a due acknowledgment of his signature by the testator.

I must, therefore, hold that the will was not duly executed.

UNITED STATES REPORTS.

COURT OF APPEALS, NEW YORK.

Anna Eckert, Administratrix, &c., v. The Long Island R. R. Co.

What would be negligence for the purpose of saving property would not be for the purpose of saving human life.

1. *Held*, that a person voluntarily placing himself, for the protection of property merely, in a position of danger, is negligent, so as to preclude his recovery for any injury so received, but that it is otherwise when such an exposure is for the purpose of saving human life, and it is for the jury to say in such cases whether the conduct of the party injured is to be deemed rash and reckless.
2. The plaintiff's intestate seeing a small child on the track of the defendants' railroad, and a train swiftly approaching, so that the child would be almost instantly crushed, unless an immediate effort was made to save it, and in the sudden exigency of the occasion, wishing to save the child, and succeeding, lost his own life by being run over by the train.

Held that his voluntarily exposing himself to the danger for the purpose of saving the child's life was not, as a matter of law, negligence on his part, precluding a recovery.

[*Chicago Legal News*, Sept. 9th, 1871.]

Appeal from the judgment of the late general term of the Supreme Court, in the second judicial district, affirming a judgment for the plaintiff in the city court of Brooklyn, upon a verdict of a jury. Action in the city court of Brooklyn, by the plaintiff, as administratrix of her husband, Henry Eckert, deceased, to recover damages for the death of the intestate, caused as alleged by the negligence of the defendants, their servants and agents, in the conduct and running of a train of cars over their road. The case, as made by the plaintiff, was that the deceased received an injury from a locomotive engine of the defendants, which resulted in his death, on the 26th day of November, 1867, under the following circumstances:

He was standing in the afternoon of the day named, in conversation with another person, about fifty feet from the defendants' track, in East New York, as as train of cars was coming in from Jamaica, at a rate of speed estimated by the plaintiff's witnesses at from twelve to twenty miles per hour. The plaintiff's witnesses heard no signal either from the whistle or the bell upon the engine. The engine was constructed to run either way without turning, and it was then running backward, with the cow-catcher next the train it was drawing, and nothing in front to remove obstacles from the track. The claim of the plaintiff was that the evidence authorized the jury to find that the speed of the train was improper and negligent in that particular place, it being a thickly populated neighborhood, and one of the stations of the road.

The evidence on the part of the plaintiff also showed that a child three or four years old was sitting or standing upon the track of the defendants' road as the train of cars was approaching, and was liable to be run over if not removed, and the deceased, seeing the danger of the child, ran to it, and, seizing it, threw it clear of the track on the side opposite to that from which he came; but continuing across the track himself was struck by the step or some part of the locomotive or tender, thrown down, and received injuries from which he died the same night.

The evidence on the part of the defendant tended to prove that the cars were being run at a very moderate speed, not over seven or eight miles per hour, that the signals required by law were given, and that the child was not on the track over which the cars were passing, but on a side track near the main track.

So far as there was any conflict of evidence or question of fact, the questions were submitted to the jury. At the close of the plaintiff's case, the counsel for the defendants moved for a nonsuit, upon the ground that it appeared that the negligence of the deceased had contributed to the injury, the motion was denied and an exception taken. After the evidence was all in, the judge was requested by the counsel for the defendants to charge the jury, in different forms, that if the deceased voluntarily placed himself in peril from which he received the injury, to save the child, whether the child was or was not in danger, the plaintiff could not recover. All the requests were refused and exceptions taken, and the question whether the negligence of the intestate contributed to the accident was submitted to the jury. The jury found a verdict for the plaintiff,