

ing that the accident did happen by reason of the defendants' neglect, leaving open the further question whether other causes, and among them the negligent conduct of the deceased contributed to it."

On the other hand in *Moore v. Grand Trunk R.W. Co.*, 5 O. W. R. 211, Mr. Justice Magee refused to enter judgment, although to the question, "Was the death of the plaintiff's husband occasioned by the negligence of the defendants?" the jury answered "Yes."

I think, too, that the defendants had a right to an answer to the fifth question. See also *Coulter v. Garrett*, 14 A. R. 685. I will not direct judgment to be entered for the plaintiff.

The defendants renew their application for nonsuit. I am now of opinion that I should not have allowed the case to go to the jury. Amongst other things, it was strenuously argued at the trial and is now argued again, that there is no evidence of negligence upon the part of the defendants. I have not changed my mind on this branch of the case. If there are any circumstances which could be counted for negligence against the defendants, and there is a *prima facie* case in other respects, then these circumstances must be left for the consideration of the jury. I then thought and still think that there were circumstances deposed to, and theories advanced by the experts from which, although falling far short of what would satisfy my mind, a jury might infer negligence; and, therefore, matters proper to be weighed and pronounced upon by the jury. But in the circumstances of this case, it was not, necessarily, enough that the plaintiff should give evidence of the defendants' negligence; he must shew that the deceased was acting reasonably, or rather, he must at least close his case without disclosing that the deceased was the author of her own disaster.

If, in any case, the only evidence for the plaintiff is that the person injured desired to be injured, or is recklessly indifferent as to whether he is injured or not, knowingly puts himself in the way of the danger, there can of course be no recovery although the defendant is shewn to be negligent as well.

As I said, Lizzie Armstrong is the only witness as to the facts and she discloses not only that she and her sister knew of the danger and that it was increased by the absence of street lighting at that place, but also such a careless and