

At the close of the plaintiff's testimony the defendants' counsel moved for a nonsuit which was refused; the learned Chief Justice remarking that it was for the jury to say whether what passed did not amount to a direction by his superior to go on and do it without the flag. Counsel for the defendants then said no evidence for the defence would be offered, and the learned Chief Justice then announced the questions which he proposed to submit to the jury. Of these the 5th and 6th were as follows:—

“5th. Or, were the plaintiff's injuries caused by his own want of care and disregard of the duties which he had to perform?”

“6th. If so, wherein did his want of care and disregard of his duties consist?”

After the evidence had all been taken and counsel for both sides had addressed the jury, the 5th and 6th questions were on the suggestion of defendants' counsel changed so as to leave out the words “and disregard of the duties which he had to perform.” Counsel for the defendants then asked that another question be submitted to the jury: “Did the plaintiff voluntarily perform the acts which caused his accident, knowing of the dangers which he ran?” The learned Chief Justice pointed out that such a defence had not been pleaded, and considered it unfair to be introduced at that stage of the case, and refused to put the question.

The following are the questions and answers of the jury:—

“1. Were the injuries which the plaintiff sustained caused by any negligence of the defendants? Answer—Yes.

“2. If so, wherein did such negligence consist? Answer—Neglect of Mr. Teasdale, in not placing the flag for protection.

“3. Were the said injuries caused by the negligence of any person in a position of superintendence over the plaintiff and to whose orders he was bound to conform? Answer—Yes.

“4. If so, who was such person and wherein did his negligence consist? Answer—Teasdale, by not placing flag.

“5. Or were the plaintiff's injuries caused by *his own want of care*? Answer—*No, it was no part of his duty to place these flags.*

“6. If so, wherein did his want of care consist? No answer.

“7. In case the plaintiff should be entitled to recover, at what sum do you assess the compensation to be awarded? Answer—\$1,980; \$26 doctor's expenses.

“His Lordship: ‘Does the \$1,980 include the \$26?’

“Jury: ‘No, your Lordship, we thought that was the wages, and he had incurred those expenses of \$26. *The \$26 are in addition to the \$1,980.*’”