

No doubt the learned trial Judge did make to the jury the remarks quoted in the judgment of Mr. Justice Meredith at p. 59 of the Record, but the latter learned Judge omits to notice that earlier in the learned trial Judge's summing up he had addressed to the jury the following words:—

"I must tell you that the company would not be liable for the death of this person while in their employ unless they had neglected some duty owing to him by reason of which the death was caused, that is negligence upon their part."

It appears to their Lordships that this is a clear statement that the violation by the defendants of their statutory duty would not entitle the plaintiff to recover unless the injury to the plaintiff followed from that breach, that is, that the breach of the statutory duty was either the sole effective cause of the injury, or was so connected with it as to have materially contributed to it.

Again at p. 44 the learned trial Judge put to the jury the question, "Has there been a "breach of that rule? Has that breach resulted in the death of Jones?" And again at p. 45, the learned Judge said:—

"The different questions are put in order to bring out your views as far as they can be brought out as to what was the cause of the death of this man, and what was the negligence (if any) on the part of the company, and whether that negligence resulted in the death."

Thus the learned trial Judge has in effect told the jury what Mr. Justice Meredith says he ought to have told them. If the charge of the learned Judge be taken as a whole, as it ought to be (*Clark v. Molyneux*, L. R. 3, Q. B. D. 237, 243), and its general meaning and effect be judged of when so taken, their Lordships think that the jury were not left under any erroneous impression whatever as to the real nature of the issues they had to determine, or at all led to think that they were entitled to find for the plaintiff unless they were of opinion that the negligence of the defendants in employing Weymark for the work he was set to do was the cause of the death of Jones. They are, therefore, of opinion that the order directing a new trial on the ground of misdirection cannot be sustained. There remains, however, the much more difficult question raised by the cross-appeal of the respondent company, namely, whether they were entitled to have a verdict entered for them on the ground that there was no evidence before the