findings ought to be set aside, and judgment entered for them, in respect there was no evidence to go to the jury in support of the respondent's allegations, and of the findings of the jury, to the effect that the fire which ignited the lumber came from the appellants' locomotive, or that the appellants negligently used an imperfectly constructed locomotive. It is sufficient to say that the argument for the appellants upon another branch of the case, which involved an examination of the statements made by the leading witnesses, satisfied their Lordships that there was evidence upon both these points well fitted for the consideration of the jury, and that the presiding Judge would have committed a grave error if he had given effect to the motion made by the appellants' Counsel in the course of the trial, and directed a nonsuit.

It may be proper to advert here to a proposition which was submitted, though not very strongly pressed, by the appellant's Counsel. It is thus stated in the order *nisi*, as a ground for setting aside the findings, and entering judgment for the appellants,—" that the plaintiff (respondent), by piling his lumber in the defendants' (appellants') property took upon himself the risk of the same being consumed by fire from such locomotives as the defendants (appellants) used." These words are deficient in legal precision. They might very well signify that the respondent took upon himself the risk of fire which might be attendant upon the careful management of such locomotives as the respondents generally use; and in that sense the proposition which they involve would hardly be disputed by the respondent, but it would not assist the appellants' case. Accordingly a much wider meaning was attributed to the words in the course of the argument, which really came to this —that the respondent must be held to have assumed all risks of fire arising from negligence on the part of the appellants' servants, and from the disrepair or defective construction of their engines. When thus explained, the proposition appears to be so opposed to reason and authority that their Lordships do not think it necessary to take any farther notice of it.

In the next place, it was maintained for the appellants, that the answers of the jury to the first, second, third, fourth and tenth questions were against evidence; and that the findings in answer to the question numbered the *fifth* ought to be set aside, not only because it was against evidence, but also in respect that the question was irregularly submitted to the jury. The alleged irregularity consisted in this, that the presiding Judge, after receiving replies to the other questions, and after the respondents' Counsel had moved for judgment, put that additional question to the jury, before they were discharged, with the view of explaining the answer which they had already given to the fourth question. It appears to their Lordships that, in so doing, the presiding Judge acted within his powers, and with perfect propriety. It was the duty of the learned Judge to prevent miscarriage, and to take care that the material issues of fact raised by the evidence should be exhausted; and in the event of any answer given by the jury being incomplete, or requiring explanation, it was his duty, as well as his right, to put a farther question or questions, with the view of ascertaining what the jury did intend to find as their verdict.

Upon the question whether the findings complained of in the order *nisi* are against evidence, their Lordships, after hearing Counsel for the appellants, are not prepared to differ from the judgments of the Courts below. It is for the appellants to show that an honest and intelligent jury could not reasonably derive from the evidence the conclusions which the jury who tried this case have embodied in their findings. That, in the present case, implies a very heavy *onus*. Seeing that there must, some time or another, be an end of litigation, Courts are naturally reluctant to allow a third trial by jury except upon clear and strong grounds; and in this case the verdict of the jury has been sustained by the concurrent opinions of no less than five of the seven learned Judges who heard and decided the case in the Courts below, one of the five being the Judge who presided at the trial.

Apart from these considerations, which are of great importance in determining whether a new trial ought to be allowed, their Lordships have formed the opinion for themselves, that there is evidence sufficient to sustain the material findings of the jury. The appellants' Counsel scarcely ventured to dispute that the evidence was sufficient to warrant the finding that the fire which caused the mischief came from the smoke-stack of the locomotive engine No 5. Then it seems to be sufficiently established by the evidence that,—if the lower edge of the cone be one or two inches above the level of the bed on which the rim of the bonnet rests, and if at the same time there be an aperture between the bed and the rim, caused either by the rim not being evenly fitted to the bed, or by the rim not being tightly fastened down—it is not only possible, but probable, that the exhaust steam from the cylinders will be deflected by the cone, and rush through that aperture, carrying with it sparks or live embers of a larger size, and therefore more likely to cause