The evidence lacks the essentials to constitute negligence for which at common law the defendants can be made liable, having regard to the finding of the jury. The duty of the defendants in the interest of the safety of the employee in respect to the act of a fellow-servant is to select fit and competent fellow-servants. The plaintiff was familiar with what was required of him, and was aware of the dangerous character of the employment. His own evidence and that of Greenleaf, a witness called on his behalf, is, that the fireman's time is practically fully taken up in shovelling coal and poking and otherwise attending to the fire. This may well be when we bear in mind the statement of Turner, another of the plaintiff's witnesses, that a locomotive drawing a heavily loaded train, while running from Sarnia to London (a distance of about 59 miles), will consume between six and eight tons of coal, which must be shovelled by the fireman.

The train from which the plaintiff fell was made up of fifty freight cars. The plaintiff stated in his evidence that the accident happened through the carelessness of the fireman in not looking at what he was doing; that he could have seen the plaintiff had he looked; and that, had he done so, the plaintiff would not have been struck.

I cannot see that, under the circumstances, this constitutes negligence on the part of the fireman; and, even if my conclusion were otherwise, I am satisfied that what the jury characterises as negligence was not negligence of the defendants. There is not evidence of incompetency or unfitness of the fireman, or even that the defendants believed that he was otherwise than fit and competent, or that they were negligent or wanting in care in selecting him for their employee. What the plaintiff's counsel contended is, that the place on the locomotive where the fireman and plaintiff were required to work was contracted in space, and therefore dangerous. If the inference is to be drawn from the answer of the jury that they intended their finding of negligence to extend to this place as being too restricted, and therefore an improper place to work in, the plaintiff's claim cannot be supported on that ground; for there is no evidence that this place was an improper one in the sense that it could have been made more spacious, or that there is any known method of operating locomotives, in respect of the place where these men necessarily work, superior to or safer than that in use in this locomotive.

Much as one regrets the unfortunate occurrence, which has