

[The Chief Justice then set out the provisions of sec. 264 (1) of the Railway Act and of clause (c).]

Assuming the expression "and cause to be used" to comprehend freight cars in transport over the defendants' lines, the car in question was not open to objection for any defect in the above-mentioned respects. . . .

[The Chief Justice then quoted sub-sec. 5.]

The car in question had not ladders on the ends, but it was not a car "of the company." There is a distinction drawn between the couplers to be used on all trains, and the equipment of box freight cars with ladders. The obligation with regard to the latter is confined to cars of the company. The car was, therefore, not in contravention of the sub-section. Even if the contrary were the case, it is clear that their absence in no way contributed to the accident which befell the plaintiff. I think that, upon the whole case, the jury should have been told that no case appeared upon which they could reasonably find that the defendants were negligent, and that no case of liability had been made out, and that the action should have been dismissed.

Assuming, however, that it was proper to submit the case to the jury, is the plaintiff entitled to judgment upon the answers returned to the questions? It is to be observed, in the first place, that the jury failed to return answers to the very pointed and material question on the head of negligence contained in No. 8. But they answer the very general question No. 2 . . . which is not directly pointed at the alleged defects leading to the injury, and a negative answer to which is not a finding of negligence on the part of the defendants.

The answer to questions 4 and 5 bear more directly on the question. They attribute the plaintiff's injury to the fact that the car in question lacked the ladder on the end of the car and the long lever attachment used by the defendants in their cars. But there is no evidence on which a jury could reasonably find that these alleged defects were the proximate cause of the accident. The plaintiff was endeavouring, by using the side ladder, not as a means of descending to the ground and there effecting the coupling, as he admits was the proper course, but for the purpose of enabling him by using the lowest step as a foothold and crouching with his body in a strained and awkward position, to effect the coupling, without stopping the car or getting down to the ground. The position was admittedly an improper and certainly a very dangerous one, not authorised to be taken. The method adopted by the plaintiff to endeavour