

"Q. You knew he stopped there, and you knew that having passed the semaphore and having stopped at that place he gave you the signal that he was ready to go ahead. Then was not your signal an order to him to go ahead? A. My signal was an order for him to go ahead when it was all right to proceed.

"Q. Now then, your signal to the engineer in answer to the two whistles you say was that your train was all right as far as you were concerned? A. As far as I was concerned it was all right for him to proceed."

There is no evidence in contradiction of this, and it is affirmed by all the competent evidence given upon the subject.

The error in the reasoning and in the conclusions of the Divisional Court seem to me to be plain. The continuing breach of duty of the engineer up to the time of the disaster is overlooked; the case is treated as if his only breach of duty was in proceeding to the tank with the bridge signal set against him, but that really has little or nothing to do with the case. Notwithstanding that the bridge signal is set against a train or engine the engineer is guilty of no breach of duty in coming past the bridge signal—the bridge semaphore—to the water tower to take water; he is only guilty of a breach of duty if he came to the tower with more than 15 cars attached to his engine; and that breach of duty has nothing whatever to do with the swing-bridge, or any duty in connection with it: the duty is in connection with the crossing of the other railway on the level before reaching the water-tower: if more than fifteen cars are attached to an engine at the tower the train will overlap the other railway, an obviously improper thing to do: and it is only in regard to that danger that the duty of splitting the train and going back to unite it again is imposed; it has nothing whatever to do with the bridge or bridge signal. So that whether the conductor should, as the jury found or for all necessary and practical purposes need not, have compelled, if he could, the engineer to back up and obey the rule in that respect it has nothing to do with this case: it would have been, or might have been, a matter of great importance if an accident had happened at the level crossing.

So too in regard to the jury's finding that the engineer was negligent in passing the semaphore without permission. I can find no good reason for limiting it to the partial, and