ble precaution against accident, and especially at so dangerous and much frequented a part of their line. [Bramwell, B.—It is a mistake to say that because the company are wiser now they were foolish before. Kelly, C.B.—You would say it was the duty of the railway company to anticipate every possible form of accident] No doubt Brett, J., took a strong view at the trial against the plaintiff, but we contend that it was more, indeed that it was peculiarly, a question for them, and that the verdict was right. They cited *Christie* v *Griggs*, 2 Camph. 79, and the observations of Sir J. Mansfield C.J.

Manisty, Q.C., and *Edwards*, for the defendants, *contra*, were not called on to support their rule.

Kelly, C.B.—I am of opinion that the defendants' rule in this case must be made absolute. The jury, no doubt, have found that the accident to the plaintiff was caused by negligence on the part of the railway company, but I think that there was no negligence at all, and I must confess that I see no evidence of any. It has been contended on the part of the plaintiff that there ought always to be two men on the engine, not only, as is the case when it is being used to pull or propel a train of carriages on the main line, but on every occasion whenever an engine is moved about on a line of rails, whether by itself or attached to carriages, so that if one of the men should happen to drop down dead, the other may be at hand at once to take his place, and thus the probability of such an accident as the present happening may be avoided. But, if it be that that is a necessary regulation in the present case, I see no reason why it should not be a necessary one in every imaginable case where a man is employed in any duty whatever about a railway. But we must use our common sense in the matter. Now, in the present instance there was nothing dangerous or attended with any peculiar risk in the duty upon which the man was occupied, although the learned counsel for the plaintiff assumed, as a matter of course, that it was an occupation very liable to produce a fit of some kind. But surely it was never heard that sickness of any kind was ever produced by it. If then this be an operation usually conducted by one man, and without any ill results arising therefrom, it would surely be a very strong thing to say that the not employing two men to perform the operation was negligence on the part of the company. There is, I think, nothing in that contention of the plaintiff. But then it has been suggested that the siding leading to the coaling shed should be so constructed that what is called a "runaway engine" could not by possibility get upon the main line. But if it must be so in one case it must be so in another. No doubt the company have altered the mode of constructing the sidings. But it is a new mode of construction, and I see no reason for saying that there is not as much danger from the one way as from the other. It is enough to say that it is new. The old plan had been adopted and used by the company for twenty years, and no accident had ever before happened; and it appears to me that it would be most unreasonable to suppose that the company could or ought to have foreseen this accident, or to hold them responsible for it upon its happening.

Bramwell, B.—I am entirely of the same opinion, and am quite satisfied that this rule must be made absolute. I agree with the Lord Chief Baron and my brother Brett, and confess that I cannot see any evidence of negligence in the matter. Although I have no desire to occupy time unnecessarily, I think that there are matters of considerable importance involved in this particular case. One of them is, that people do not furnish evidence against themselves simply by adopting a new plan in order to prevent the recurrence of an accident. I think that a proposition to the contrary would be barbarous. It would be, as I have often had occasion to tell juries, to hold that, because the world gets wiser as it gets older, therefore it was foolish before. Moreover, I think that in such a case as the present, an expert, if I may so say, some scientific medical man, practically acquainted with the nature of the duty to be performed by the engine man here should have been called to inform the minds of the court and the jury as to the duty in question, and whether or not it was a dangerous one, and likely to be productive through the fumes arising from the burning coal of any attack in the nature of a fit, and that it should not have been left to the bare statement of the learned counsel. Here counsel on the one side assert that it was a very dangerous occupation, and the counsel on the other side assert the contrary. Who is to decide between them? But suppose that we were to hold that this verdict is right, and the Lancashire and Yorkshire Railway Company were to do, what I think they would not be blamable for doing, viz., to publish a new and increased tariff of their rates of charge, and to say, "Whereas the Court of Exchequer have laid it down as law that two men are necessary on every engine, under all possible or conceivable circumstances, where only one man was accustomed to be employed before, therefore we have raised our fares to such and such prices, to meet the extra expense imposed on and incurred by us in complying with the decision of the court," what, I wonder, would people think of the Court of Exchequer then? But there is another point to be noticed in this case. Here it was owing to the voluntary and deliberate act of the pointsman himself that the engine went in the direction in which it did go. Mr. Holker even, on the part of the plaintiff, says that he does not blame the man for that; on the contrary, he really thinks the man exercised a wise discretion in doing what he did, and that I think is quite true. But, nevertheless, the man did it; it was his own voluntary and wilful act; and if the truth must be spoken, I cannot see what answer he would have had if an action had been brought against him. He might say, and no doubt with extreme truth, "it is a very hard case, I did the best I could, and my duty," and no doubt it would be a very hard case; but the plaintiff might also truly say, "I cannot help that, you ran over me, and hurt me very seriously." Take the case of a man driving a carriage through a street, and, to avoid a certain accident, he turns a little out of his course and drives over A. and inflicts upon him serious injuries. surely A. might say to him, "Why did you select me as the object to be driven over?" Then it is said that people are responsible for