

At one time a watchman had lived in a house at the dam, and after his death, on the 14th of July, 1912, his widow lived there until the autumn and the house was burnt by someone unknown about a month after she left, since which time there has been no watchman on the premises. It will be observed that the finding of the jury is "by not having watchmen." The "a" before "watchmen" has been struck out, therefore their finding must mean that one watchman must be there day and night. This is not put forward in the statement of claim as an item of negligence unless it is covered by (2).

I think, also, that the evidence shews that George Hudson, who knew of the break in the dam, was guilty of negligence causing the accident in voluntarily attempting, with knowledge of the risk he ran, to pass the place of danger. The evidence of Mrs. McCumber on this point is as follows: "I met Hudson a little way south-west of the bridge. He stopped to ask me if that was the right road to Wagarville, and I said 'Yes.' I had seen him driving through some backwater on the highway already. I asked him if he had heard of the dam, and he said 'Yes,' and I said it had gone out by some means last night, and I told him water was running round each end of the bridge and there were some rails and floodwood at the other side, and I did not know whether he could get through or not. He said he did not mind the rails if the bottom was all right, and I told him it was always hard bottom there where the water was running round. We waited to see how he would get there. He went through the first approach and on the bridge, and going off the bridge to the approach on the far side the horse seemed to go right down deep and the buggy swerved around and he went out of the buggy and cried out for help."

In this state of facts I am of opinion that the plaintiff cannot recover and I dismiss the action—under all the circumstances without costs.

Thirty days' stay.