

The charge proceeds to deal with contributory negligence—and questions are submitted. Counsel upon this appeal complains that the learned Judge was not right in his law when addressing the jury; and, if we take out one sentence from all the rest, a plausible argument may be framed that this contention is correct—but the jury were not allowed to find a general verdict or to deal with the law at all—and any such error (if such there were, and I think there was not, taking the charge as a whole) could not affect the answers of the jury or the result.

The following questions were submitted (I subjoin the answers to save repetition):—

1. Were the defendants guilty of negligence in operating the shunting train? A. Ten for negligence, two against.

2. If so, what was the negligence? A. That the cars should not be cut loose without a man being in charge of the brake. Ten for, two against.

3. If there was negligence, was the accident to the deceased caused by such negligence? A. Ten say yes, two say no.

4. Or was the accident caused wholly or partly by the negligence of the deceased? A. Eleven say partly, one says wholly.

5. Damages? A. To the widow, \$1,000; to Ronald, \$750; to Catherine, \$750.

Thereupon counsel for the plaintiff asked that the jury should be told that they were at liberty to say that, in all the circumstances, there was negligence, without mentioning any specific negligence. This the Chief Justice rightly refused. Counsel contended then that “kicking off the cars in the way it was done was negligence,” and his Lordship left that to the jury.

The jury then retired; and counsel for the plaintiff addressed the Court:—

“Mr. O’Donoghue: I suggest to your Lordship that you should leave this question to the jury also: Could the defendants, notwithstanding the negligence, if any, of deceased, have avoided the accident?”

“His Lordship: That is not the question you handed up to me. I will ask them, if you choose, whether Rowan, after he became aware of the position of this man—that he was crossing the track—could, by the exercise of reasonable care, have prevented the accident happening.

“Mr. O’Donoghue: I am submitting the general question.

“His Lordship: Well, I will not put the general question.

“Mr. O’Donoghue: I was just getting it on the notes.