

To say that the signal from the conductor was an order for him to proceed which he was bound to obey no matter how the signals might be is to say something which is obviously absurd and is plainly disproved. It is the first and most important of all the duties of the engineer to regard the signals and to be answerable for it that the engine does not proceed or remain stationary in violation of them; it is one of the necessary essentials of his position. After stopping he could not properly proceed as he did without a signal from the rear of the train giving—whether at a bridge or anywhere else it would have been the same—assent; but that assent did not absolve him from any of his duties; his signal to the conductor was an intimation that he desired to proceed and that so far as he was concerned he might safely do so; the answer of the conductor was but his assent, and intimation that all was right so far as he was concerned, as the evidence shews. The train had not been divided; he had seen that the orders signal at the station required no delay and that the rear end part of the crew were in place—the rear watchman, if there had been one, recalled—and all was ready so far as that end of the train was concerned; it in no sense relieved the engineer of any part of his duty to guard against all danger ahead.

It is quite true that the conductor admitted, in giving his evidence at the trial, that he saw the signal set against crossing at some time when the engine was taking water, but not after getting the engineer's signal of readiness to go ahead; and so I am unable to see how negligence on his part is proved in this respect, and it is not found by the jury. But even if it had been proved that it was his duty as well as the engineer's to observe the signal ahead, and if it were his duty to have also looked before assenting to the engineer's signal to proceed how could that relieve the engineer of his duty? Concurrent negligence would not legally lessen the responsibility of either. And in this respect it must be pointed out that the conductor was apparently nearly a quarter of a mile away from the signal post and light, whilst the engineer was quite close to them; that sometimes the signal was out of order and hand signals at the bridge were used, close to which the engineer was, whilst the conductor was far out of sight and hearing. The conductor's evidence in regard to his duty and signal is as follows:—