

control of the train. The House of Lords (Halsbury, L.C., Watson, Herschell, Macnaghten, Morris, Shand and Davey) were unanimous that there was evidence to go to the jury of negligence, although their lordships were not all agreed as to whether the engine driver or the fireman was "the person in charge or control of the train." Lord Halsbury contented himself with saying that there was evidence, without expressing an opinion as to the result of it; Lord Watson thought the words "any person in charge, etc.," do not necessarily point to one person who is in charge of the whole train, but that one person may be in charge of part and another of another part, and if any one is negligent in his own department that is enough to constitute negligence within the Act—and at any rate the plaintiff was entitled to go to the jury upon the alternative that either the fireman or the engine driver was in charge. Lords Herschell, Shand, MacNaghten and Davey agreed with the view of Rigby, L.J., but were also of opinion that if the engine driver could be said to have ceased to have control of the wagon in question, there was evidence to justify the finding that the fireman had control. Lord Morris thought the engine driver was in control, and that there was evidence of negligence on his part.

SHIP—CARRIAGE OF GOODS—COMMON CARRIER—BILL OF LADING—SHORT DELIVERY
—EVIDENCE—BURDEN OF PROOF.

Smith v. Bedouin Steam Co., (1896) A.C. 70, was an action brought by ship owners to recover freight for the conveyance of 1,000 bales of jute, against onerous indorsers of the bill of lading. The defendants claimed to retain out of the freight the value of 12 bales short delivered out of the 1,000 covered by the bills of lading. There was no clear evidence as to how or where the missing bales disappeared. The Scotch Court of Session under the circumstances considered the defendants were not entitled to deduct the value of the missing bales, but the House of Lords (Lords Halsbury, L.C., Watson, Shand and Davey) were of opinion that the bills of lading constituted prima facie evidence that the bales in question had been duly delivered to the plaintiffs, and that the burden of displacing that evidence was on them, and not having dis-