

by the plaintiff to recover damages for the death of her husband, who had been killed by one of the defendants' trains under the following circumstances: The defendants' line crossed a highway on the level. Near the crossing was a gate-keeper's lodge, where a servant of the defendants was stationed, whose duty was to attend to the gates at the crossing, and whenever a train was approaching to stand by the rails, and if the line was clear exhibit a white flag by day, or a white light by night. The deceased, who lived near the crossing, between 8 and 9 o'clock on a dark but clear December night, called at the gate-keeper's lodge to inquire whether his wife was there, and found the gate-keeper sitting in his lodge reading. Being told that his wife was not there he left the lodge. Though a train had been signalled, the gate-keeper gave him no warning, and did not go out to signal the train. The deceased attempted to cross the line and was killed by a passing train. There was evidence to show that the train carried lights which were visible by anyone about to cross the line at the level crossing, for about 600 yards or more. The engine driver whistled ten seconds before the train passed over the crossing, which it did at the rate of 35 or 40 miles an hour. The engine driver testified that when approaching the crossing he saw the light on the carriage gates, but did not see any hand signal by the gate-keeper. The question argued was whether on this evidence the Judge at the trial ought to have withdrawn the case from the jury. It was contended by the defendants' counsel that the evidence was consistent with the deceased having come to his death through his own negligence, and that there was no evidence of negligence by the defendants causing his death, and that the onus was on the plaintiff to show that the death was occasioned by the defendants, and the plaintiff had failed to discharge the onus. The Court of Appeal, (Lord Esher, M.R., and Lopes and Kay, L.JJ.) were, however, unanimous that there was sufficient *prima facie* evidence of negligence by the defendants to warrant the Judge in submitting the case to a jury. The fact that the gate-keeper was found by the deceased sitting in his lodge reading, was