

question "Wherein did such negligence consist?" they answered, "In not properly fastening the spool, and the engineer starting the engine too fast." In answer to a further question, "Was the injury to the plaintiff caused by reason of any defect or arrangement of the ways, works, machinery, plant, or other premises connected with the defendants' business?" they answered in the affirmative, and further that the defect consisted "in not properly fastening the spool and the engineer starting the engine too fast."

They were also asked to find: (12) Was there at the time of the accident any abnormal strain put upon the spool?" (13) If so, how was it occasioned? (14) Was it the fault of any person? (15) If so, whose fault was it?

Now, the last three of these questions were really the important and crucial questions in the case. This had been indicated by the Divisional Court, and the Judge in his charge seems to have impressed the same view on the jury. Upon the evidence it seemed manifest that there could only be one finding on question No. 12. The Judge evidently supposed that the finding must be in the affirmative, and he submitted the question more as a matter of form than anything else. The jury, however, answered in the negative and thus relieved themselves of answering the three following questions.

Now if this answer could be supported upon the evidence, it would become necessary to examine the other findings and the evidence bearing on them. But not only is the answer not supported by the evidence, but it is opposed to the whole body of the testimony, as well as to common knowledge, and, it may be added, to common sense. The evidence demonstrates that in the conditions then existing with the force of a powerful engine applied to a line passing from one immovable object to another immovable object, the strain was tremendous and abnormal, and, as one witness said, what was being done was just pulling to break the line, and the effect would be to part the line or pull the spool out or pull the kedge anchor out or move the dredge, or something would have to give way.

It is difficult to understand how, in face of the evidence and of the Judge's charge, the jury could make the finding they did on this point, and it cannot be permitted to stand. The result is, that the most important question involved in the action, viz., what was the cause of the abnormal strain, by what means was it produced, and to whose fault, if it was the fault of any person, was it owing, has not yet been tried.