But it is said that there is power to convert this private way into a public one; the obvious answer to which, however, is, whether or not such power exists, it has not in fact been exercised, and so the plaintiff yet has this right of action. It will be time enough to deal with any such question when it can be properly, and is, raised.

So too the amendment of the statement of claim—setting up a deed given for the purpose of correcting a obvious misdescription merely—as I think, was quite properly allowed; and I also agree with the trial Judge, in the view expressed by him, that the new deed was not essential to the maintenance of this action, that the old deed covered sufficiently the place in question.

The appeal, in my opinion, should be dismissed.

COURT OF APPEAL.

NOVEMBER 19TH, 1912.

ALLAN v. GRAND TRUNK Rw. CO.

4 O. W. N. 325.

Negligence—Engineer—Backing up Locomotive — Brakeman in Control of Train—Engineer in "Charge or Control" of Locomotive—Workmen's Compensation for Injuries Act, s. 3, s.-s. 5—Liability of Employer.

COURT OF APPEAL *held*, that an engineer who is running a locomotive engine has the "charge or control" of it, even though he may be subject to the orders of a fellow-workman as to the operation of the train, and that therefore his employers are liable under s.-s. 5 of s. 3 of the Workmen's Compensation for Injuries Act if a fellow-servant is injured by his negligence.

Judgment of Boyd, C., at trial affirmed with costs.

Appeal by the defendants from the judgment at the trial before the Chancellor and a jury, in favour of the plaintiff.

The plaintiff, a brakeman employed by the defendants upon a freight train, was, while in the discharge of his duties, injured at Berlin station upon the defendants' line, on the night of the 18th August, 1911, through the alleged negligence of the engineer in charge of the engine.

The material facts were disputed at the trial, but it was conceded by the learned counsel for the defendants that for the purposes of the argument here the facts must be accepted as given by the plaintiff, from which it followed, and was also conceded, that the only question really was