intervene under section 193 and defeat the garnishing proceedings by shewing that the Court had no jurisdiction over the garnishee.

*C. A. Moss*, for primary creditors. *W. H. Blake*, K.C., for intervener.

---

Divisional Court.] [Jan. 28.

SCHWOOB *v.* MICHIGAN CENTRAL RY. CO.

*Negligence—Master and servant—Defect in machinery—Conflict of opinion as to type—Defective system of inspection.*

In an action brought against a railway company to recover damages because of the death of a fireman who was scalded by steam which escaped in consequence of the giving way of a water pipe in an engine, evidence was given on behalf of the plaintiff that the type of engine in question was of dangerous construction and especially liable to accidents of the kind, but it was shewn on cross-examination of the plaintiff's witnesses that the use of engines of this type was well established and that they had many points in their favour.

*Held*, that the principle adopted in actions of negligence against professional men should be applied, namely, that negligence cannot be found where the opinion evidence is in conflict and reputable skilled men have approved of the method called in question.

At common law a master is bound to provide proper appliances for the carrying on of his work and to take reasonable care that appliances, which if out of order, will cause danger to his servant are in such a condition that the servant may use them without incurring unnecessary danger. These duties he may discharge either personally or by employing a competent person in his stead and the purpose of sub-s. 1 of s. 3 of the Workmen's Compensation for Injuries Act, as modified by s. 6, sub-s. 1, is to take from the master his common law immunity for the neglect of such a person.

Where, therefore, an accident occurred as the result of the giving way of a water pipe in an engine which had not long before been in the defendants' repair shop for the purpose of having the water pipes repaired it was held that the inference might be drawn that there had been negligence on the part of the workman entrusted with the duty of doing the repairs, and either absence of inspection or negligent inspection and that if an inference of either kind were drawn the defendants would be liable.

A non-suit granted by MEREDITH, J., was therefore set aside and a new trial ordered.

*Crothers*, for plaintiff. *Cattanach*, for defendants.