vant of the defendants, at a place where the two railways crossed, in failing to give the proper signal.

The Canadian Northern was the senior road in possession of the track. Leave was granted to the Canadian Pacific to cross the track on condition that the Canadian Northern should appoint a man to take charge of the crossing. This man became intoxicated and the disaster resulted. The service in question was performed solely for the benefit of the Canadian Pacific. The question of liability was brought before the Railway Board, but irrespective of the accident, and the Chief Commissioner gave a ruling that this signalman should be regarded as the joint employee of each railway; and that each company should be liable for all damage suffered on its own line caused by the negligence of this joint signalman.

BOYD, C.:—This ruling was in March, 1909, and does not authoritatively control the relative liability of these defendants for what occurred in September, 1910, under the permission to cross, granted in April, 1908, but it is a valuable expression of the mind of the Railway Board as to existing legal liability.

This man, appointed by the one company and paid by the other, would be a person in charge of the signals at the crossing and interlocking switches, within the meaning of the Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 5; *Gibbs* v. *Great Western R.W. Co.* 12 Q.B.D. 208.

In the evolution of the law, the old test, as to who hired and paid is being modified, if not superseded, by the more modern method indicated in the judgment of Garrow, J.A., in *Hansford* v. *Grand Trunk R.W. Co.*, 13 O.W.R. 1184, at p. 1187: *i.e.*, the whole circumstances of the employment must be looked at; and the real effect of the actual relation existing must not be lost sight of in deference to a formula about hiring or paying.

The common signal-man is to be regarded as the person employed by the company for which he is adjusting the points and giving the signals.

If the order of the Board be regarded as a quasi-contract or in the nature of a contract between the companies, the rules of common law would place liability on the company which was making use, on its own line, of the common servant for the sole prosecution of its own work at the crossing of the other road. . . . *Hall* v. *Lees*, [1909] 2 K.B. 602.

Or, if the theory of joint service be rejected, and the signalman, so appointed and so paid, be regarded as a servant or agent sui generis of both companies, then fairness and good sense