

on train rules and undergo a satisfactory eye and ear test by a competent examiner."

It was not suggested that the Commissioners had not jurisdiction to make this order, or that it had been complied with in Weymark's case.

The 427th section of the Canadian Railway Act provides as follows:—

"Any company, or any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such company, that does, causes or permits to be done, any matter, act or thing contrary to the provisions of this or the Special Act, or to the orders or directions of the Governor in Council, or of the Minister or of the Board made under this Act, or omits to do any matter, act or thing thereby required to be done on the part of any such company or person, shall, if no other penalty is provided in this or the Special Act for any such act or omission, be liable for each such offence to a penalty of not less than twenty dollars and not more than five thousand dollars in the discretion of the Court before which the same is recoverable."

"Such company, director, officer, receiver, trustee, lessee, agent or person shall also, in any case, in addition to any such penalty, be liable to any person injured by any such act or omission for the full amount of damages sustained thereby."

The company whose officers permit any employee not qualified in the way prescribed to do work such as Weymark was put to, i.e., to engage in the operation or working of a train, is thus made liable in damages to any person injured by their breach of this statutory duty.

The defendant company in the present case did not rely upon any contributory negligence on Jones's part. And it does not appear to their Lordships that they could, even apart from the above-mentioned provision of the Railway Act, have relied upon the fact that Weymark and Jones were fellow-servants, since Weymark was placed in the position he held in breach of the employer's clear statutory duty, and the breach of such a duty by an employer is not one of the risks which a servant can be assumed to undertake to run when he enters that employer's service. Lord Watson in *Johnson v. Lindsay*, [1891] A. C. 371, p. 382, states the general common law principle thus:—