

ing the semaphore when up. Up to the point of the conductor's signal to the engineer to go on, no harm had come to the engineer. He was at a place of safety. His first negligence was not, it is contended, the cause of the accident, and should not, in view of the rules of the company, and of the statute, disentitle the plaintiff to recover.

It is argued that the death of the engineer was caused by the negligence of the person in charge of the train, within sec. 3, sub-sec. 5, of the Workmen's Compensation for Injuries Act. The defendants' rule 22 puts the train entirely under the control of the conductor, and his orders must be obeyed except where they are in conflict with the rules and regulations, or plainly involve any risk or hazard to life or property, in either of which cases all participating will be held alike accountable. Rules 52, 60, 213, and 232 were also cited. In view of these, and inasmuch as the deceased knew that the semaphore was up, and not lowered for the train of the deceased, he must be held equally responsible with the conductor; and so I must dismiss this action.

The action will be dismissed, but without costs.

BRITTON, J.

DECEMBER 15TH, 1911.

PLOCKS v. CANADIAN NORTHERN COAL AND ORE
DOCKS CO.

Master and Servant—Injury to Servant—Negligence—Person in Superintendence—Workmen's Compensation for Injuries Act, sec. 3, sub-secs. 1, 2—Defective System—Findings of Judge.

Action for damages for personal injury sustained by the plaintiff, while in the employment of the defendants, owing to the negligence of the defendants or their servants, as alleged.

The action was tried at Port Arthur, without a jury.

A. E. Cole, for the plaintiff.

W. F. Langworthy, K.C., for the defendants.

BRITTON, J.:—On the 8th May, 1911, the plaintiff, as a workman in the employ of the defendants, was engaged with other men—labourers—in shovelling coal. The defendants were mov-