

to, and did, submit to all such appointments as the other company choose to make.

So too, that the signalman was in the service of the Canadian Pacific R. Co., who paid him and concurred in his appointment: and that the service at the time and place in question was being performed solely on behalf of and for the benefit of that company. If these things had been as they are incorrectly stated a very different case would be presented for consideration on this appeal.

Judging only from the quotation from them made by the trial Judge, it seems to me to be obvious that the views expressed by the chairman of the railway Board, upon the application which was then before him, which had nothing to do with this matter, have been misapplied to this case. The chairman was evidently dealing with the question of what should be the form and effect of the order to be made upon an application for crossing facilities; not in any sense as to the effect of the order which was made in this matter; if it had been otherwise I cannot think that anyone could agree with him; as they are even, there may be very different opinions.

It would certainly be a new and unfortunate state of affairs if one were to be held answerable in damages for the misconduct of a servant in whose appointment he had no voice and who was not subject to his orders or control, nor hired or paid by him, and who was not acting upon his request or at his instance or for his benefit, but the very opposite, in the misconduct which caused the injury.

The case seems to me to be a very plain one of liability of the Canadian Northern R. Co. at common law; and not of liability of the Canadian Pacific R. Co. under the Workmen's Compensation for Injuries enactments or otherwise. Since this opinion was written I have had an opportunity of perusing the ruling of the railway commissioners referred to in it, and find that it is entirely in accord with the views I have expressed in all respects. It is there said by the chief commissioner, among other things. "I think in all cases where the Board has made crossing orders the man in charge of the interlocker has been regarded as the employee of the senior"—the Canadian Northern Railway Company—"only in which event if through his carelessness or negligence damages arise to the servants or employees of the junior company recovery must be had against the junior company."