

Co., with costs throughout to the plaintiff and the Canadian Pacific Rw. Co.

If, however, it is deemed necessary by any of the parties, the matter may be mentioned again.

HON. MR. JUSTICE GARROW (*dissenting*):—I agree with the conclusion of the learned Chancellor.

Such cases are always in my experience somewhat difficult of easy solution, largely, I suppose, owing to the somewhat nice distinctions and discriminations which must be made. The law itself seems plain and simple enough. It is the facts and the inferences of fact which are troublesome.

The principle of respondeat superior upon which they all rest is thus expounded by Best, C.J., in *Hall v. Smith*, 2 Bing. 156, p. 160, "The maxim of respondeat superior is bottomed on this principle, that he who expects to derive advantage from an act which is done by another for him must answer for any injury which a third person may sustain from it." And that a person may, while the general servant of one person, become the particular servant as to a particular act of another person, in other words, serve two masters, cannot now be disputed in the light of the authorities.

In *Union Steamship Co. v. Claridge*, [1894] A. C. 185, p 188, Lord Watson said, "that the servant of A. may upon a particular occasion and for a particular purpose become the servant of B., notwithstanding that he continues in A.'s service, and is paid by him, is a rule recognized by a series of decisions," to some of which I referred in *Hansford v. Grand Trunk Rw. Co.*, 13 O. W. R. 1184, cited by the Chancellor in his judgment.

In a recent case in the House of Lords, *McCarten v. Belfast Harbour Comrs*, 44 Irish L. T. R. 223; [1911] 2 Ir. R. 144, in speaking of the value of such cases, the Lord Chancellor said, "Decisions are valuable for the purpose of ascertaining a rule of law. No doubt they are also useful as enabling us to see how eminent Judges regard facts and deal with them . . . but it is an endless and unprofitable task to compare the details of one case with the details of another in order to establish that the conclusion from the evidence in the one must be adopted in the other also."

That the case involved a similar question, namely, which of two alleged masters was liable for the negligence of the servant of one of them to another servant engaged in the same operation. The case had been tried by a jury, and the