

The amount of damages to be paid by the company ultimately held liable was agreed upon and fixed at \$4,250.

The only question tried and debated was, which one of the defendants was answerable for the consequences of Leland's negligent act.

The solution of that question is to be found by ascertaining from the facts established in evidence whose servant Leland was in fact and law when he committed the negligent act. And, as has been many times observed, the answer depends upon the facts and the proper inferences to be drawn from them.

The recent case in the House of Lords of *McCartan v. Belfast Harbour Commissioners*, reported in 44 *Irish Law Times* 223, was one in which action was brought for personal injuries to the plaintiff, while engaged in helping to unload a ship. A crane, the property of the defendants, was hired to the master of the ship for unloading purposes. The crane was in charge of and worked by a servant employed by the defendants. The plaintiff was working under employment by the master of the ship, and was injured through the negligence of the craneman. There was judgment for the plaintiff, and ultimately an appeal to the House of Lords. It was contended for the defendants that quoad the work on which he was engaged at the time of the accident the craneman was the servant of the master of the ship, and not the defendants' servant. The Lord Chancellor said: "I regard this case as one purely of fact, in which no point of law is in dispute. The question on which the decision hinges is this—the man whose negligence caused the accident, acting as servant of the defendants in doing what led to the mishap or as servant of the master of the vessel which was being unloaded?" And Lord Dunedin said (p. 226): "There is no principal involved in . . . this case except the principle which I have already mentioned, which is compendiously described by the brocard *respondeat superior*, and as to which no one entertains any doubt. The application of that particular principle depends upon facts and is a question of fact . . ."

The present case having been tried without a jury, and there being no substantial difference as to the facts, we are free of the difficulties which sometimes arise in dealing with findings upon disputed facts. It only remains to endeavour to make the proper application of the facts and the inferences to be drawn from them, in order to ascertain which of the two companies is liable.

The learned Chancellor has held the defendant the Canadian Pacific Railway Company liable, basing his conclusion,