

REPORTS AND NOTES OF CASES.

England.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

Lords Atkinson, Shaw, and Moulton.]

[13 D.L.R. 900.]

JONES v. CANADIAN PACIFIC RY. CO.

1. *Master and servant—Employer's liability—Statutory duty—Railway employees passing test.*

Where a railway company in breach of the duty imposed by Order No. 12225 of the Railway Commissioners of Canada, permits an employee to engage in the operation of trains without the specified examination and test, the company is, by virtue of sec. 427 of the Railway Act, R.S.C. 1906, liable in damages to any person injured as a result of such breach of duty. *Jones v. Canadian Pacific R. Co.*, 5 D.L.R. 332, 3 O.W.N. 1404, reversed; see also Workmen's Compensation for Injuries Act, R.S.O. 1897, c. 160, R.S.O. 1914, c. 146; and Fatal Accidents Act, 1 Geo. V. (Ont.) c. 33, amending R.S.O. 1897, c. 166, R.S.O. 1914, c. 151.

2. *Common employment—Master's breach of duty.*

The defence of common employment is not available to the master in a case in which injury has been caused to a servant by the negligence of a fellow-servant selected by the master in breach of a statutory duty to employ in the particular service only persons who have passed a qualifying test, if the injury be the natural consequence of the lack of capability which the test should have disclosed. *Jones v. Canadian Pacific R. Co.*, 5 D.L.R. 332, reversed; *Groves v. Wimborne*, [1898] 2 Q.B. 402, applied.

3. *Evidence—Presumptions and burden of proof—As to skill—Railroad employees.*

The flagrant failure of a section foreman improperly entrusted with the charge of a railway snow-plow train in violation of statutory regulations requiring that only employees should be placed in charge who had passed the prescribed examination to observe the signals or to signal to the engine driver