

the crossing the signals of safety were set upon the line which gave them a clear right of way: there was no need for, or to signal for, any service on the part of the signalman; it was the right and the duty of the train to go on as it did; the difficulty arose not from any service needed or asked for by those in charge of the train, but by reason of the other company's tipsy servant interfering with that train's right of way, not at the request or instance of the Canadian Pacific R. Co. or for their benefit, but wholly and diametrically opposed to their interests and desires. On the contrary it was for the benefit of the other company, because his actions made their line safe in making the Canadian Pacific R. Co.'s line unsafe, and throwing the train off the track and killing the plaintiff's husband. It ought not to be necessary, but it seems to be, to say that in making the one line safe the other is necessarily made unsafe, that is the purpose of the interlocking apparatus: in opening the "derailing" switch on the one line that switch is automatically closed on the other line giving the only safe right of way to the latter.

One might well differ from the trial Judge with greater hesitancy were it not that he was under a misapprehension of some of the very material facts of the case when disposing of it; the Canadian Northern R. Co. was not ordered by the railway Board, "to appoint a competent man" to be in charge for the crossing; the order was that they "be entitled to place a man in charge of such crossing;" when the line was to be put in use by them, upon giving forty-eight hours previous notice to the other company. The Canadian Northern R. Co. did not use at all times this part of their road; and so they were at liberty to withdraw the signalman whenever they saw fit not to use it; at which times if they did their duty they would see that this interlocking switch was securely locked so as to give the right of way all the time to the other company's line; and so the signal service was all the more under their control and in their charge and keeping.

It was also incorrect to say, as the trial Judge did, in his reason for deciding against the Canadian Pacific R. Co., that a competent man was appointed to the satisfaction of that company; they were in no way consulted about the appointment of any of the several signalmen and knew nothing about them nor had anything to do with them, but had