

attend to his duties, but it had no power to dismiss or even suspend him. It was, of course, part of his duty to pay attention to the signals from trains of the Canadian Pacific R. Co. approaching the crossing and to set and place the signals and derails so as to permit the crossing to be safely made as soon as the traffic in the Canadian Northern R. Co.'s line permitted. But such acts as these cannot be so classed as to convert them into orders or directions given to him as a servant of the Canadian Pacific R. Co. As the case appears to me it is the simple case of a man employed and paid by the Canadian Northern R. Co., subject only to its orders and subject only to dismissal by it, acting on its behalf as the company having sole control of the interlocking plant but under obligation to permit the crossing to be safely made by the Canadian Pacific R. Co.'s trains, but in subordination to the Canadian Northern R. Co.'s trains.

And in my opinion no question of joint or common employment or agency arises. Leland was at the time engaged in permitting a Canadian Pacific R. Co.'s train to make the crossing in response to its signal, and his negligent act was in displacing the points after he had permitted the train to proceed.

I think that negligent act was committed by Leland as the servant of the Canadian Northern R. Co., and that it should be held liable for the damages.

This conclusion gives rise to another question which was raised and partially discussed upon the argument of the appeal—the plaintiff has not appealed against the Canadian Northern R. Co., or asked that if the judgment against the Canadian Pacific R. Co. be set aside, judgment for the damages should be entered against the Canadian Northern R. Co. Upon the argument of the appeal, counsel for the plaintiff asked to be allowed to appeal so as to obtain judgment against the Canadian Northern R. Co.

The case seems a proper one for giving this relief, and it should be granted. But the Canadian Northern R. Co. may be advised that in order to render unnecessary any further argument, it would be proper to submit to judgment in the same way as if an appeal had been brought by the plaintiff in the first instance.

In that case judgment may go setting aside the judgment against the Canadian Pacific R. Co., and directing judgment to be entered against the Canadian Northern R.