

unwarrantably placing an obstruction upon the Pacific Company's property in the way of the train.

This appeal of the Pacific Company should, in my opinion, be allowed and the plaintiff should have leave to appeal against the judgment in favour of the Northern Company and I agree in the proposed disposition of the costs.

HON. MR. JUSTICE MEREDITH:—I am quite unable to agree with the trial Judge in his views of this case.

I am quite unable to understand how anyone who does not hire or pay, and who cannot discharge, order or control, a servant employed and paid, and subject to discharge and to the orders and control of another person only, can be considered the master of or answerable for the misconduct of such a servant: manifestly, I would have thought the master could be only he who employed, paid and discharged the servant, and to whose orders and control solely he was subject.

In this case the Canadian Northern R. Co. hired, paid and discharged all the signalmen, for the crossing where the accident happened, who were all subject to the orders and control of that company solely. The Canadian Pacific R. Co. had no voice in any of these things, they had no power whatever over any of them, nor ever assumed or attempted to exercise any authority respecting them: their only right was that of any other stranger to the contract between master and servant, to complain to the master if they had fault to find with any act of the servant; but even that was never done.

How then is it possible, rightly, to hold the Canadian Pacific R. Co. liable for his negligence in the performance of his duties in such a service? Because that company was bound to recoup the other in the amount expended in his wages cannot have any such effect: see *The Slingsby*, 120 Fed. Rep. 748, and *Swanston v. North Eastern, &c.*, 3 Exch. D. 341.

The narrow ground upon which the trial Judge held that the Canadian Pacific R. Co. is liable was, in my opinion, based upon error in fact as well as in law. It is not a fact that in doing that which caused the accident the signalman was acting upon the request, or at the instance, or for the benefit of that company. When their train was approaching