

stated that there was no fault in anything done by the engineer or fireman; there was no jolt which threw him off the car. The accident would not have happened had it not been for his momentary hesitation by reason of his failure to grasp what was said by Bryant.

The jury found that there was "negligence on the part of the defendants through the defendants' employee not seeing plaintiff was on the other car before the cars parted;" which means, that in the view of the jury it was incumbent upon Bryant, the brakeman upon the ground—whose duty it was to give the signals for the motion of the engine—to have seen that the plaintiff reached the rear car before the signal was given which caused the engine to stop and permitted the cars to part.

*Allan v. Grand Trunk Rv. Co.*, 23 O. W. R. 453, and *Martin v. Grand Trunk Rv. Co.*, 4 O. W. N. 51, justify the finding that Bryant was in charge or control of the engine within the meaning of sub-sec. 3 of the Workmen's Compensation Act; and I think that the jury might well come to the conclusion at which they have arrived, that Bryant, who knew that it was the plaintiff's duty to go upon the rear car, ought to have seen that the plaintiff was safely there before giving the signal in question.

At the trial, counsel for the defendants did not desire the question of contributory negligence to be submitted to the jury; so that in this view the plaintiff is entitled to recover \$1,500, the amount awarded by the jury.

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MASTER IN CHAMBERS.

APRIL 14TH, 1913.

RICHARDSON v. ALLEN.

4 O. W. N. 1136.

*Process—Writ of Summons — Service Outside Jurisdiction—Order for Motion to Set Aside—Entry of Conditional Appearance—Enlargement of Time for Delivery of Defence—Waiver—Costs.*

MASTER-IN-CHAMBERS *held*, that the entry of a conditional appearance and the procurement of an enlargement of time for delivery of the statement of defence precluded defendant from moving to set aside an order for service of a writ of summons outside the jurisdiction.

Motion by defendant to set aside an order for service of a writ of summons outside the jurisdiction and all proceedings thereunder.