

happened was much the same as if the railway watchman at a highway crossing were to signal to a teamster that it would be safe to cross and then drop the bar across the horse's back.

It is true the train was derailed by means of an appliance put on the Pacific track by the Pacific Company, and which that company assented to being used by the Northern Company through its signalman, but they did not assent to his doing so negligently or improperly and there was no negligence in giving such assent.

It is not the fact that the engineer or any employee of the Pacific Company signalled for any movement of the signals or switches either then or ordinarily. The signalman of the Northern Company controlled the right of the Pacific Company's trains to cross, but no employee of the Pacific Company had any authority over the signalman.

It is true the Pacific Company had applied for the protection of the crossing by signals and the signals would necessitate a signalman, but they did not ask for or obtain the control in any way of the signalman. As appears it is usual for the "senior" company at railway crossings to appoint the signalman. In fact the Pacific Company did no more than a municipality might do which asked that a railway company should maintain a watchman at a highway crossing.

From the decision of the Board of Railway Commissioners (Report for 1909, 44 Sess'l. Papers, 1910, 20 c. p. 304), mentioned by the learned Chancellor it is apparent that it was the view of the Board and it would seem of railway companies themselves that in taking the appointment of the signalman the senior company was assuming a serious responsibility which it was felt they should not in future orders be subjected to and the Board decided that in future orders made after 1st October, 1909, it would be provided that the signalman should be regarded as an employee of both senior and junior companies.

Apart from that view upon the facts here it does not appear that the negligent signalman was in fact in any sense in the service of the Pacific Company or that at the moment of his negligent action or in taking the course he did he was for the time being acting otherwise than as the servant of the Northern Company which through him was