

be regarded as a *quasi* contract or in the nature of a contract between the companies, the rules of common law would place liability on the company who was making use on its own line of the common servant for the sole prosecution of its sole work at the crossing; (c) or if rejecting the theory of joint service and regarding Leland, appointed and paid in the manner in which he was, as the servant or agent *sui generis* of both companies, then fairness and good sense would support the proposition that the company for whom he was alone acting on the particular occasion was the principal against whom relief should be sought in case of misconduct on Leland's part occasioning injury to an employee of the last-mentioned company.

But however strongly these propositions may appear to be consistent with what should be fair as between the two companies, I am, with deference, unable to think that they can be considered as decisive of the question in issue here. In order to give effect to them it must be first found that Leland was the common servant of the companies. He was, it is true, the common signalman in the sense that he was the only one in charge, but it by no means follows that he was the servant of both companies. It must depend upon the circumstances of his engagement, the nature of the duties he owed to the respective companies, and the extent of the control over his conduct and actions vested in each of them.

The occasion for the employment of a person performing the duties which Leland was engaged in arose out of the application of the Canadian Pacific R. Co. to the Board of Railway Commissioners for leave to cross the track of the Canadian Northern R. Co.'s spur line to their gravel pit at the point in question. The board granted the leave, but directed that the Canadian Pacific R. Co. should, at its own expense, under the supervision of an engineer of the Canadian Northern R. Co., insert a diamond on the track of the latter company at the point of crossing, and that the crossing be protected by an interlocking plant, derails to be placed on the line of both companies on both sides of the crossing, the derails to be interlocked with home and distant signals. Then followed directions bearing directly on the question here, viz., (4) that during such period of the year as the line of the Canadian Northern R. Co. is not being operated, the signals and derails be set and placed so as to permit the crossing to be safely made by trains of the Canad-