

ANNOTATION ON THE ABOVE DECISION.

Sub-sec. 5 of sec. 3 of the Workmen's Compensation for Injuries Act, R.S.O. 1897, ch. 160, should receive a liberal construction in the interests of the workman. An employer may be responsible for the negligence of an employee resulting in injury to another employee, although the one injured is in authority over the other. In an Ontario case the plaintiff was foreman of a railway yard of the defendants, and M. was his assistant and subject to his orders. In carrying out the plaintiff's orders M. gave a wrong direction to the driver of the yard engine, by reason of which the plaintiff was struck by the engine and injured. The engine driver testified that he took his instructions from M.:—*Held* (Lennox, J., dissenting), that there was reasonable evidence that M. was, on the occasion in question a person in charge or control of the engine, within the meaning of sub-sec. 5; and, upon the findings of the jury in an action to recover damages for the plaintiff's injury, the defendants were responsible for the negligence of M.: *Martin v. Grand Trunk R. Co.*, 8 D.L.R. 590, 27 O.L.R. 165.

Where a brakeman engaged in coupling cars at night is injured by reason of the negligence of the engineer in charge of the locomotive in failing to wait for a new signal to start, it having been prearranged between the two that the brakeman was to give such signal by lantern, the master is liable under sub-sec. 5 of sec. 3 of the Workmen's Compensation for Injuries Act, making an employer responsible "by reason of negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine or train upon a railway, tramway or street railway": *Allan v. Grand Trunk R. Co.*, 8 D.L.R. 697, 4 O.W.N. 325.

In the case of *McLaughlin v. Ontario Iron and Steel Co.*, 20 O.L.R. 335, an overhead crane in the defendants' factory, operated by electric power, was used to raise and move heavy castings from place to place. M., the man who operated the crane, sat in a cage which ran upon rails, and from it he regulated the movement of the crane; when the crane was brought to the place where it was to be used, it was lowered and raised according to the direction of the foreman, who stood on the ground below, near the casting which was to be moved. The crane had been in use where the plaintiff, a foreman moulder, was working, and he had told M. that he did not require it any more, and, while M. was moving it away, it was raised above the plaintiff's head, the cable parted, and a heavy hook attached to the cable fell and injured the plaintiff. In an action to recover damages for the injuries sustained, the jury found that the injuries were caused by the negligence of M. in hoisting the hook and the sheaf of the crane over the plaintiff's head and letting it come in contact with the drum or something unknown, thereby breaking the cable:—*Held*, that M. was a person having the charge or control of an engine or machine upon a railway or tramway within the meaning of clause 5 of sec. 3 of the Workmen's Compensation for Injuries Act, R.S.O. 1897, ch. 160; and