

complete answer may be doubtful. See *Burns v. Poulson*, L.R. 8 C.P. 563.

I have studied the evidence with some care to see if this position is justified in fact. The material parts are fairly set out in the judgment of the Divisional Court, and it is not necessary to repeat them.

It is clear that the generator had been set up, and that the foreman of the mechanical department had finally passed it as complete. The motor, which is movable, was moved to and put in its proper position, and the belt attached in order to transmit the power to the generator.

The motor was not, I think, a machine or engine on a railway or tramway, within sec. 3, sub-sec. 5, of the Workmen's Compensation for Injuries Act, as it was fixed and in position, and was not, in the operation of testing, moving or intended to move. The power applied was electricity, which was turned on to the motor by Thompson, and by means of the belt the generator was operated.

What the case must turn upon, in my judgment, is the communication made by Darke to Jeffries, the foreman, and his consequent directions. These were, as stated by Cartner, that Cartner was to stay with Mr. Darke "until the load was on the machine," to see that everything was all right. This, of course, means either the initial application of electricity to the generator or its increase to the full load required; but, in either event, Darke's duties would continue till the switch was turned by Thompson, and Cartner's presence would have been useless unless something antecedent to the test was intended by the express order of Jeffries.

Now, Darke was, according to Cartner, in charge of the machine, i.e., as between the two of them; and Darke had apparently the idea that the machine was not then secure; so that his conversation with Jeffries could only have related either to that present fact, or, as is suggested by the evidence, to his doing anything necessary after the generator had begun to operate. The latter seems a quite inadequate explanation, in view of Jeffries's earlier instructions on that point. Regard must be had to the further fact that Cartner was told to remain, in addition to Darke, for some reason arising out of Darke's conversation and only until the load was on the machine. I think it is fair to infer, as the jury have done, that Jeffries's instructions to Darke were, that he was to be present prior to as well as at the electrical testing, and to do all necessary mechanical work arising during that whole period. If so, what Darke was doing was in the course of his employment, and