

plant derails to be placed on the lines of both companies on both sides and to be interlocked with home and distant signals, (4) that during such period of the year as the Northern line is not being operated, the signals and derails be set so as to permit the Pacific trains to cross without stopping, and then it should not be necessary to have a man in charge of the crossing, (5) that the Northern Company "be entitled to place a man in charge" of such crossing whenever the line is to be operated by that company upon giving notice to the Pacific Company, (6) that the Northern Company's trains have priority, (7) that the man in charge be appointed by the Northern Company, and (8) that the Pacific Company bear and pay the whole cost of providing, maintaining, and operating the interlocking plant, including the cost of keeping a man in charge of the crossing. By another order of 7th May, 1908, on the Pacific Company's application and on the recommendation of the Board's engineer "the applicant company and the railway company," which I suppose means both companies were authorized to operate trains over the crossing without being brought to a stop.

Among the rules adopted by the Board for interlocking systems at crossing at rail level, one provides that "when the signals on the distant and home posts indicate safety the train can proceed."

In September, 1910, the crossing was in operation and the Northern Company were using the spur line for hauling gravel and other purposes, but the Pacific Company had five or six times as many trains crossing as the Northern Company. A signalman was in charge and operated the signals and derails on both lines from a tower which seems to have been located on the land forming the original right of way of the Northern Company though that is not very clear—no part of that land seems to have been acquired by the Pacific Company.

The Pacific Company's train on which the plaintiff's husband was fireman was proceeding to cross without stopping as the signals indicated safety, and the signalman in the tower negligently and without cause or warning operated the derailing switch on the Pacific Company's property and derailed the train, and the fireman was killed.

The negligent signalman had been selected and appointed solely by the Northern Company and was subject only to its