

pointed, as providing, and intended to provide, for the case of a signalman who should be in charge of the crossing and should be in the service of the two companies, acting for each upon its own lines as the occasion required. And in holding that on the occasion in question, Leland, the signalman in charge, was a person in the service of the defendant the Canadian Pacific R. Co. as employer, who had charge or control of the points and signals at the crossing in question within the meaning of sec. 3, sub-sec. 5, of The Workmen's Compensation for Injuries Act.

Such a construction violates no rule of law, in my opinion, and is in entire accordance with the justice of the case.

I would dismiss the appeal with costs.

HON. MR. JUSTICE MAGEE:—The Railway Act, 1906 (R. S. C., ch. 37), in sec. 151, clause c, gives each company the power to cross any railway as by clause (d) it gives power to carry the railway across the lands of any person, but by sec. 227, it directs that the cars shall not do so, cross another railway until leave therefor has been obtained from the Board of Railway Commissioners, and upon application for such leave the Board may direct that such works and appliances be installed, maintained, and operated by watchmen or other persons employed, and measures taken as appear to the Board best adapted to prevent danger, and make other directions, and by sec. 229, at any such crossing at rail level the Board may order the adoption of such interlocking switch derailing device signal system and appliances as to render it safe for trains to pass over the crossing without being brought to a stop.

In 1908 the Canadian Pacific R. Co., which I may call the Pacific desired to cross the spur-line of the Canadian Northern R. Co., which may be called the Northern, and it did not desire to do so overhead or by subway, but at rail level, and it made application to the Board to vary a previous order of December 26th, 1906, by granting permission to use the crossing for other than construction purposes, and by having the crossing protected by home and distant signals. The Board's order of 29th April, 1908, gave (1) the leave to cross, but directed (2) that the Pacific Company at its own expense under supervision of an engineer of the Northern Company should insert the diamond at the crossing, (3) that it should be protected by an interlocking