sion that he was a vice principal of the company, for whose derelictions of duty it was responsible, whatever might be the character of the duty he engaged to perform. In support of this proposition are cited Railway Co. v. Ross, 112 U. S. 377, 5 Sup. Ct. 184; Railway Co. v. Callaghan, 6 C. C. A. 205, 56 Fed. 988; Garrahy v. Railroad Co., 25 Fed. 258; Ragsdale v. Railway Co., 42 Fed. 383; and Mase v. Railroad Co., 57 Fed. 283.

The first two cases are easily distinguishable from that before us. In the Ross Case the engineer on a freight train recovered from the company for the joint negligence of the conductor of his own train and the conductor of a gravel train. The court drew a distinction "between servants of a corporation exercising no supervision over others engaged with them in the same employment, and agents of a corporation clothed with the control and management of a distinct department, in which their duty is entirely that of direction and supervision" (112 U. S. 390, 5 Sup. Ct. 184), and rested its decision on a ground that has no application to this case, viz. that the person injured was under the direct authority and control of the person whose negligence caused the injury. Moreover, the decision in the Ross Case has been so limited and restricted by the subsequent decisions of the supreme court that it cannot now be treated as authority in any case which does not present substantially the same state of facts.

In Railway Co. v. Callaghan, supra, the plaintiff was not the direct subordinate of the conductor. But he was riding, by direction of the company's superintendent, on a train that was under the entire control and management of the conductor, who directed at what time it should start, at what speed it should run, at what stations it should stop, and for what length of time, and everything essential to its successful movements; and it was by the negligence of this conductor in discharging his duty of supervision and control over the operation of this train, viz. in driving it too fast, and in failing to stop at proper stations, that he ran it into a defective bridge, and caused the injury.

The opinion in Mase v. Railroad Co., supra, rests upon the proposition that the character of the work of a switchman makes him a vice principal,—a proposition that we have already discussed and disapproved.

So far as the cases of Garrahy v. Railroad Co., supra, and Ragsdale v. Railroad Co., supra, hold that under the general law a conductor or employé on one train, whose negligence causes the injury of an employé of the same master on another train, is not the fellow servant of the latter, it is sufficient to say that they have now been so universally disapproved by repeated decisions of the national courts and by the late decisions of the supreme court that they are no longer authority.

Thus, in Randall v. Railroad Co., 109 U. S. 483, 3 Sup. Ct. 322, which was decided in 1883, the brakeman engaged on one engine was injured while turning the switch for his train, by the negligence of the engineer of another engine, who ran the latter upon him. This engineer had absolute control of his engine and of all

its movements at the time, but he was held to be a fellow servant of the injured brakeman, and the company was declared to be exempt from liability.

In Steamship Co. v. Merchant, 133 U. S. 375, 10 Sup. Ct. 397, which was decided in 1889, the stewardess of a steam vessel was injured through the negligence of the porter and carpenter of the same vessel. The latter failed to properly secure a railing across the gangway, and the stewardess leaned over it, and fell into the water. The persons composing the ship's company were divided into three departments,—the deck department, the engineer's department, and the steward's department. The carpenter and porter were in the deck department, and the stewardess in the steward's department; but she was held to be a fellow servant of the carpenter and porter, and was denied a recovery against the steamship company.

In Railroad Co. v. Andrews, 1 C. C. A. 636, 50 Fed. 728, decided by the circuit court of appeals for the sixth circuit in 1892, a brakeman on one train was held to be the fellow servant of the conductor and engineer of another train, by whose negligence a collision was caused in which the brakeman was killed.

In Railroad Co. v. Baugh, 149 U. S. 379, 13 Sup. Ct. 914, decided in 1893, the supreme court held that an engineer who, under the rules of the company, was "regarded as conductor," and who had the direction and control of his engine and of his fireman upon it, was not a vice principal of the company, and that the latter was not liable for an injury to the fireman, caused by the engineer's negligent disregard of his orders.

And, finally, in Railroad Co. v. Hambly, 14 Sup. Ct. 983, decided May 26, 1894, the supreme court held that the conductor and engineer of a passenger train who negligently drove their train upon and injured a common laborer, employed under a section foreman in repairing the railroad, were fellow servants of the laborer, and that he could not recover of the company for their negligence.

So far as the national courts are concerned, these authorities conclude the discussion, and establish the proposition that, in the absence of statutory regulation, conductors, as well as other employés, whether they are charged with the duty of handling switches or of driving trains, are, so far as actions against the common master for negligence are concerned, the fellow servants of all other employés engaged in the common object of securing the safe passage of trains; and it conclusively follows that the conductor who left open this switch in the case before us was the fellow servant of the fireman on the train who was carried through it to his death.

But it is said that, if the court erred in its charge upon the subject we have been considering, that error did not prejudice the company, because there was uncontradicted testimony that there was no target on the switch; and the court charged the jury that if the switch was not in proper order because it had no target upon it, and for that reason the injury and death were caused, the company was liable.

This position cannot be successfully maintained. The testimony was such that the jury might well have found that the injury was neither caused nor contributed to by the absence of the target, and that it resulted solely from the negligence of the conductor, who left the switch open. The defendants in error charged two acts of negligence upon this company,—the failure to provide the target; and the failure of the conductor to close the switch. Issues were raised and submitted to the jury to determine whether either of these acts caused or contributed to the injury. The verdict was general, and its generality prevents us from discovering upon which of these acts of negligence charged it was founded. A general verdict cannot be upheld where there are several issues tried, and upon any one of them error is committed, in the admission or rejection of evidence, or in the charge of the court, because it may be that the jury founded their verdict upon the very issue to which the erroneous ruling related, and that they were controlled in their finding by that ruling. Coal Co. v. Johnson, 6 C. C. A. 148, 151, 56 Fed. 810; Maryland v. Baldwin, 112 U. S. 490, 492, 5 Sup. Ct. 278.

The judgment below must be reversed, and the cause remanded, with directions to grant a new trial; and it is so ordered.

NORTHERN PAC. R. CO. v. MASE.

(Circuit Court of Appeals, Eighth Circuit. July 16, 1894.)

No. 383.

1. MASTER AND SERVANT—NEGLIGENCE OF FELLOW SERVANTS—OPERATION OF RAILROAD TRAINS.
   A railroad company is not liable, under the general law, for the injury of an employé on one train caused by the negligence of the conductor in its employment on another train in leaving a switch open that it was his duty to close, as the conductor and the injured employé are fellow servants. Railway Co. v. Needham, 63 Fed. 107, followed.

2. SAME—STATUTORY LIABILITY OF RAILROAD COMPANIES.
   Under Comp. St. Mont. 1887, c. 25, § 697, relating to railroad corporations, which makes such a corporation liable to a servant or employé for injury sustained by default or wrongful act of his superior, as if such servant or employé were a passenger, a railroad company is liable for an injury inflicted in Montana, to a fireman in its employment on one train, caused by the negligence of a conductor in its employment on another train in leaving a switch open.

In Error to the Circuit Court of the United States, for the District of Minnesota.

This was an action by Clara Mase, administratrix of Frank B. Mase, deceased, against the Northern Pacific Railroad Company, to recover damages for the death of said Frank B. Mase. A trial by jury was waived, and the case was submitted on an agreed statement of facts. The circuit court rendered judgment for plaintiff. 57 Fed. 283. Defendant brought error.

J. H. Mitchell, Jr. (Tilden R. Selmes, on the brief), for plaintiff in error.