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No. 36.

COURT OF APPEAL.

MAY 15TH, 1912.

*PATTISON v. CANADIAN PACIFIC R.W. CO.

Railway—Crossing of one Railway by another—Leave of Board of Railway Commissioners—Terms of Order—Interlocking Plant—Signalman—Hiring by one Company and Payment Indirectly by the other—Negligence—Injury to and Death of Servant of one Company—Liability of Employing Company—Action against both Companies—Reversal of Judgment at Trial—Leave to Plaintiff to Appeal against Company Held not Liable by Trial Judge.

Appeal by the defendant the Canadian Pacific Railway Company from the judgment of BOYD, C., 24 O.L.R. 482, ante 45.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

I. F. Hellmuth, K.C., and Angus MacMurchy, K.C., for the appellant.

Wallace Nesbitt, K.C., and Christopher C. Robinson, for the defendant the Canadian Northern Railway Company.

C. A. Moss, for the plaintiff.

Moss, C.J.O.:—This appeal, though nominally and in form an appeal against the plaintiff, is in substance and reality an appeal against the defendant the Canadian Northern Railway Company. At the trial, and again on the argument of the appeal, it was admitted that the unfortunate accident which caused the death of the plaintiff's husband was due to the gross negligence of one Frank Leland, who was operating the points and signals in connection with the interlocking plant at Ward's crossing.

*To be reported in the Ontario Law Reports.