

Mr. Ashworth to lead me to discredit his statement that the report was with the view of having an accurate contemporaneous report in the event of the accident giving rise to litigation. *Betts v. Grand Trunk R.W. Co.*, 12 P.R. 86 and 634, where the report was held not to be privileged, well illustrates the distinction.

In this case the examination was had before production. I do not think that the question as to the right of the plaintiff to inspection of this document should be raised in this way. Upon an order to produce being served, the defendants would, no doubt, claim privilege by their affidavit, and this affidavit would be conclusive, and there is no right to cross-examine upon it. The plaintiff cannot in this way do indirectly what he is not permitted to do directly.

So in both aspects the appeal fails and must be dismissed with costs to the defendants in any event.

—/—

BOYD, C.

SEPTEMBER 19TH, 1911.

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

*Railway—Crossing of one Railway by another—Interlocking Plant—Signal-man—Negligence—Injury to and Death of Servant of one Railway Company—Joint Servant—Liability for Injury.*

Action by Margaret Pattison, widow of Samuel Pattison, a locomotive fireman employed by the defendants the Canadian Pacific Railway Company, to recover damages for his death, alleged to have been caused by negligence of a servant of those defendants or of the defendants the Canadian Northern Railway Company, at a place where the two railways crossed, in failing to give the proper signal.

F. H. Keefer, K.C., for the plaintiff.

W. H. Curle, for the defendants the Canadian Pacific Railway Company.

O. H. Clark, K.C., for the defendants the Canadian Northern Railway Company.

BOYD, C.:—There is no dispute about the facts. The acci-

\*To be reported in the Ontario Law Reports.