

was filed. It, however, was still objected to and plaintiff moved for a better affidavit.

A. Ogden, for the plaintiff's motion.

F. McCarthy, for the defendants, contra.

CARTWRIGHT, K.C., MASTER:—The second part of the first schedule shewing documents which defendants object to produce mentions two reports made to their solicitor by their claims agents. In the affidavit privilege is claimed because "the reports were made solely for the information of the defendants' solicitor and his advice thereon and under a reasonable apprehension of an action or claim being made."

It was objected to this that it should have said that these reports were made after a special direction to that effect from the solicitor, and that a general order to that effect was not sufficient to make such reports privileged. No authority was cited for this proposition which seems to go further than any decided case. The decision in the analogous case of *Swissland v. Grand Trunk R.W. Co.*, 3 O. W. N. 960, seems to approve of the claim of privilege made as has been done in the present case. See p. 962.

The second schedule shewing documents at one time in defendants' possession mentions only reports of the engineer and conductor of the train on which the plaintiff's husband was killed, "made for the purpose of obtaining necessary details for information of Board of Railway Commissioners under sec. 292 of the Railway Act and subsequently destroyed." Section 292 (2) says that the board "may declare any such information so given to be privileged." There is nothing in the material to shew if any such declaration either general or special, has been made by the board. Counsel for the defendants seemed to think that if this had not been done then the reports could be seen at the office of the board.

In any case he conceded that the engineer or the conductor or both, if necessary, and if still in the service of the defendants could be examined for discovery, when they would have to make full disclosure as to their knowledge, recollection, information and belief as to the cause of the fatal accident in question.

This will give the plaintiff all that can be of any service at this stage. This motion will be dismissed, but with