directing Mr. D. A. Burns to attend for examination for discovery as an officer of defendants.

W. N. Tilley, for defendants.

C. A. Moss, for plaintiff.

The judgment of the Court (BOYD, C., FERGUSON, J., MACMAHON, J.) was delivered by

BOYD, C.—The statement of claim asserts that Mr. Burns was appointed "executive officer" of the association sued as the Tanners' Association, paragraph 5, but, according to the circular and the fact, he is only an agent. It appears that this association is a partnership or unincorporated company, consisting of a number of dealers in leather—in effect a syndicate made up of mixed partnerships and incorporated trading concerns—one of whom, the Breithaupt Leather Co., Limited, defends,because "sued as the Tanners' Association."

This company takes up the defence as being one of the constituents of the association defendant. This company can have officers within the meaning of the Rule as to discovery, but such officers the defendants cannot have as being a mere partnership. It does not follow from this method of defence that Burns, the agent of the association, becomes an officer of the Breithaupt Company, or is to be so regarded for the purposes of preliminary discovery. There is nothing to shew or to prove that he is an officer of the defendants or of the Breithaupt Company, who defend as for the Tanners' Association. If the whole body of the syndicate came in seriatim as defendants, like the Breithaupt Company, it would not make Burns an officer of each of them that happened to be incorporated so as to be examinable for discovery, and he certainly would not be such an officer as to any of the syndicate who are mere partnerships. In brief, the whole syndicate aggregated becomes the defendant, a mere association, which has an agent, Burns—but this Burns is not an officer of each member of the syndicate who is a corporate body.

This case seems to be unique, and the policy of the Court is not to liberalize the construction to be put upon this Rule: Morrison v. Grand Trunk R. W. Co., 5 O. L. R. 48, 1 O. W. R. 758; and, in my opinion, the order should be vacated—costs in cause to defendants.