

Eng. Rep.]

SMITH V. THE LONDON AND SOUTH WESTERN RAILWAY CO.

[Eng. Rep.]

practice of carrying passengers from Great Malvern Station to the New Milford Station?

2. "Did a train of the defendants on the 25th of November, 1869, leave the said Great Malvern Station to go to the New Milford Station, at or after 6.34 p.m., by which a passenger whom the defendants as carriers of passengers had agreed to carry to New Milford Station might start on his journey from Great Malvern Station to New Milford Station, and if no such train started at 6.34., at what time on that day, after that hour did the first train leave Great Malvern Station by which such passenger could start as aforesaid on the said journey?"

3. "If a passenger started from Great Malvern Station by that train, would he have been carried by the defendants to Hereford on the said journey to New Milford Station, and, if yea, by what train would he have been carried by the defendants on his said journey from Hereford towards New Milford Station, if he proceeded onward from Hereford as soon as practicable?"

4. "Did any collision or other and what accident occur to the last mentioned train, on this said journey from Hereford, shortly after it left the defendants' Hereford Station, and before it reached any other station of the defendants?"

5. "If you say that there was a collision, what was it that the said train in which the plaintiff was a passenger came into collision with? Were the defendants possessed thereof? Was it under the care of themselves, or one or more of their servants? Was it on the same rails with the same train? Was it standing still, or moving? If moving, was it moving towards Hereford, or in the opposite direction? How came it to be on the rails there? If there was any other cause of the collision, or other accident beyond what you have stated, what was it?"

6. "Was or were any person or any persons injured in the said accident? If yea, what are their names and addresses?"

7. "Was the railway at Great Malvern on the 25th of November, 1869, the defendants' railway? Was it then worked by the defendants, or by the defendants and any other and what company?"

8. "Have the defendants ever had in their possession or control any and what report, or reports, letter, or letters, writing or writings, memorandum, or memoranda, entry, or entries, receipt, or receipts, document, or documents, relating to the matters in dispute in this action, or any of them? If yea, which of them are now in the defendants' possession or control? And have the defendants any, and what, objection to produce any, and which, of them? And what do you know as to the possession or control of the others of them since they were last in the defendant's possession or control? If any of them have been lost or destroyed what do you know of their contents so far as they relate to the matters in dispute?"

The interrogatories which had been disallowed were the 5th (with the exception of the first sentence ending "collision with"), the 6th, and the 7th.

The following cases were referred to:—*Atkinson v. Fosbrooke*, 14 W. R. 832, 35 L. J. Q. B. 182, L. R. 1 Q. B. 628; *Bayley v. Griffiths*, 10 W. R. 798, 31 L. J. Ex. 477.

WILLIS, J.—It is not enough for a party applying for leave to interrogate to show that the matter of the interrogatories is relevant to some possible issue in the cause. In framing the second Common Law Procedure Act the practice of the Court of Chancery was purposely avoided; and the discretion of the judge was interposed for the sake of avoiding costs. It is for the judge to determine at what stage of the cause discovery should be allowed. The discovery of a matter which is relevant when issue has been joined might be sought at an earlier period for heaping up expenses against the other party, and especially might this be the case in actions against railway companies. The judge at chambers therefore, must look closely at the circumstances under which the application for interrogatories is made, and see that they are not sought to be administered for the purpose of making or increasing costs. Here, when the plea has been delivered, it will probably be seen what is the nature of the case; but at present there is no affidavit before us showing that the information asked for must be relevant. If we were to do what we are now asked, a judge at chambers would in all cases feel himself bound to admit interrogatories against a railway company on the common affidavit. I think Byles, J., exercised a wise discretion.

BYLES and KEATING, J.J., concurred.

Rule refused.

EXCHEQUER CHAMBER.

(Appeal from the Common Pleas.)

SMITH V. THE LONDON AND SOUTH WESTERN RAILWAY COMPANY.

Railway company—Negligence—Evidence for jury.

A railway company's servants, having cut the grass on the banks of the line, left it there fourteen days during extremely hot and dry weather. Soon after the passing of a train a fire broke out in one of the heaps of cut grass; it then extended up the bank to the hedge, and from the hedge to a stubble field, across the stubble field and an intervening road to the plaintiff's cottage. An unusually high wind was blowing at the time. The cottage was situated 500 yards from where the fire broke out.

Held (confirming the decision of the Common Pleas), that there was evidence of negligence (*BLACKBURN, J., dubitante*), and that if there was negligence it was no answer for the company to say that the damage was greater than could be anticipated.

[19 W. R. 230.]

This was an appeal brought by the defendant against the decision of the Court of Common Pleas, discharging a rule obtained by him to set aside the verdict for the plaintiff, on the ground that there was in evidence to go to the jury of any liability on the part of the defendant.

The pleadings and facts, together with the cases cited, are more fully set out in 18 W. R. 343.

The declaration stated that, by the negligence of the company in the management of their engines, and by heaping hedge trimmings on the banks, a fire was occasioned, which destroyed the plaintiff's cottages.

At the trial it was proved that next to the company's line of rails there was a green bank; that a hedge separated this bank from a stubble