

question by any party adverse in interest to the corporation, and may be compelled to attend and testify in the same manner and upon the same terms and subject to the same rules of examination as a witness except as hereinafter provided; but such examination shall not be used as evidence at the trial."

The prior Rule made provision for the examination of "one of the officers" of the corporation, and though many decisions arose on the question whether certain persons were officers or merely servants of corporations, the question of the right to examine a member of a municipal council as an officer of a corporation never seems to have received judicial consideration.

The Rule received very liberal interpretation, and many persons who were alleged to be servants only were held to be examinable as officers.

The object of the Rule being to discover the truth in relation to the matters in question, the trend of the decisions was that the examination ought to be of such officers as are best able to give information respecting such matters, and it frequently occurring that an employee occupying no official position in the popular sense knew much more about the important facts of the case than any officer, the Rule was amended to embrace "any officer or servant."

While aldermen, as members of the municipal council, are in one sense officers of the corporation, I do not think the framers of the Rule intended to include them in the expression "officer or servant of such corporation." They are merely legislative officers of the corporation, and with the exception of the mayor or other head (who is by sec. 279 of the Municipal Act declared to be the "chief executive officer of the corporation") no individual executive or ministerial duties are imposed upon them. They are not employed by, nor are they in any way under the control of, the corporation while in office. They have no authority to act for the corporation, except in conjunction with other persons constituting a quorum.

The Municipal Act itself draws a sharp distinction between members of council and officers of the corporation.

[Reference to secs. 6, 315, 326, 327, 328, and also to Parts II. and V., of the Municipal Act.]