

MIDDLETON, J., IN CHAMBERS.

OCTOBER 1ST, 1913.

LANGE v. TORONTO AND YORK RADIAL R.W. CO.

Discovery—Examination of Servant of Defendant Railway Company—Rule 327—Injury to Passenger on Street-car—Examination of Conductor—Adequate Discovery—Application for Examination of another Servant of Company—Grounds for.

Appeal by the defendants from an order of the Senior Registrar, sitting for the Master in Chambers, dated the 24th September, 1913, directing the examination of John Break a servant of the defendant company, for discovery, at the instance of the plaintiff, notwithstanding the prior examination of one Thomas Walker, also an employee of the defendants.

Featherston Aylesworth, for the defendants.
A. W. Burk, for the plaintiff.

MIDDLETON, J.:—Rule 327 (new Rules, 1913) precludes the examination of a second officer or servant of a corporation without leave. This action is an ordinary accident case. The plaintiff alleges that she was injured by the premature starting of a street-car. The conductor of the car has been examined for discovery. He was present at the time of the accident, and has answered satisfactorily all questions put to him, and has given a clear and intelligible account of what took place.

It appears that Break happened to be near the car at the same time, and he also saw the occurrence. He was not in charge of the car, nor was he in any way concerned with its operation. He was merely an eye-witness of the accident. There is no suggestion that the discovery afforded by the examination already had is not adequate, and does not completely disclose to the plaintiff the case she will have to meet. Under these circumstances, I can see no justification for the further examination.

In my view, leave should not be granted to have a second examination unless for some reason the examination already had has failed to give to the party seeking it the discovery to which he is entitled. It is not enough to establish that the person whose examination is sought may be a most important witness at the trial.

The appeal will, therefore, be allowed, with costs here and below to the defendants in the cause in any event.