

BAIN, J.]

[Dec. 19, 1895.]

MCCUAIG v. PHILLIPS.

*Contract—Meaning of “to” a certain date.*

The point of law decided in this case was as to the construction of the following clause in an agreement signed by the defendants for the purchase of the plaintiff's wheat, viz. : “P. & R. to give him (plaintiff) any rise in market prices, to the first of May.” Plaintiff contended that he was entitled to the rise of prices which occurred on the first of May, but defendants argued that the 30th of April was the last day up to which the plaintiff could claim any rise in prices, and paid into court the balance due for the price of the wheat on that basis.

*Held* that “to” in such an agreement would sometimes include the day named, and sometimes exclude it; but that if it was permissible to consider the conduct of the parties themselves to show in what sense they used the ambiguous word, it was clear that the plaintiff considered that the period provided for did not extend past the 30th of April, for on that day he went to the defendants' office in order to have a settlement for his wheat.

*Held*, also, following *Nichols v. Ramsel*, 2 Mod. 280, and *People v. Walker*, 17 N. Y. 502, that the word “to” in the present case should not be held to include the day named, but that the period expired on the 30th of April. Judgment for defendants with costs.

*Anderson* for plaintiff.

*D. A. McDonald* for defendant.

TAYLOR, C. J.]

[Dec. 27, 1895.]

DIXON v. WINNIPEG ELECTRIC RAILWAY CO.

*Practice—Examination for discovery—Officer of company.*

There was a motion to commit one Somerset for contempt in refusing to attend for examination upon an appointment under rule 379, “Queen's Bench Act, 1895.” The plaintiff's cause of action was stated to be that while in the employment of defendants, and working with some wires from which the electric current had been cut off for the purpose of carrying on the work on which he was engaged, the electric current was turned on and he thereby sustained injury. The current was generated in the building called the power house, and it was claimed that there was faulty construction of the switch-board and electric plant in that building, whereby the current became connected with the wires on which the plaintiff was working. It was also sworn that Somerset was the foreman at the power house which, together with the action of the current, was under his control and management. An affidavit was filed on behalf of defendants to say that although Somerset was an electrician in the employment of the company at the power house, his duties as such had never been defined by the directors, nor had any resolution or by-law been passed making him an officer of the company; and he had never been named or called foreman or superintendent.

*Held* that he was an officer of the company within the meaning of Rule 379, and that he must attend for examination.

*Howell*, Q.C., for plaintiff.

*Munson*, Q.C., for defendant.