

of employees without being satisfied that they properly come within it.

In *Leitch v. Grand Trunk R. W. Co.*, 12 P. R. 541, 671, 13 P. R. 369, the grounds upon which it was considered by the Divisional Court and by Osler and Maclellan, J.J.A., in the Court of Appeal, that the conductor was examinable, were that he was intrusted by the company with the charge of their train in its transit, and that he was, therefore, for that particular occasion and purpose, to be treated as an officer.

These reasons do not appear to be applicable to the position of the driver of the engine attached to the train, for he, as well as the brakemen, is not in charge of the engine or the cars during their journey, but is under the control of the conductor.

[The learned Judge then referred to *Knight v. Grand Trunk R. W. Co.*, 13 P. R. 386; *Dawson v. London Street R. W. Co.*, 18 P. R. 223; and *Casselman v. Ottawa, etc., R. W. Co.*, 18 P. R. 261.]

None of these cases seems to me to extend the principle upon which a conductor was admitted by the Courts to be treated as an officer of the company. The principle would undoubtedly be extended at once to employees of an inferior grade, and the difficulty of drawing a line anywhere would be greatly increased, if we were to hold an engine-driver examinable under the Rule.

Appeal allowed.

Lee & O'Donoghue, Toronto, solicitors for plaintiff.

Bell & Biggar, Belleville, solicitors for defendants.

MACMAHON, J.

MARCH 7TH, 1902.

TRIAL.

BURRELL v. LOTT.

*Easement—Right of Way—Repairs—Dominant and Servient Tenements—Water—Right to Flow of—Injunction.*

Action (1) for a declaration that the defendant was not entitled to a right of way over the plaintiff's premises, or to maintain on the plaintiff's premises a certain pier, and for an injunction restraining the defendant from trespassing; (2) for a declaration that the plaintiff was entitled, in connection with his foundry business, to take and discharge into the tail race under the defendant's mill one-third of the water of the river Moira; (3) for an injunction restraining the defendant from obstructing the tail race or impeding the free discharge of waste water from the plaintiff's water wheel; (4) for a mandatory order upon the defendant to remove all obstructions from the tail race.