

by a member of the newspaper staff, who procured special information therefor, under the supervision of the managing editor, and in which action the defendants pleaded justification,

Held, that the writer was not in the position of a sub-editor, nor could he be called an officer of the company, and he was not examinable for discovery under Rule 487.

Held, also, that no sufficient foundation was otherwise laid for his examination; for it did not appear that he could give information of any facts, but merely that he could indicate where he procured evidence of the facts in dispute upon the plea of justification.

H. B. Raymond for the plaintiff.

F. A. Hilton for the defendants.

QUEBEC.

COURT OF QUEEN'S BENCH.

Full Court.]

Jan. 25.

ACCIDENT INS. CO. v. McFEE.

Accident insurance—Risk incidental to employment—Breach of contract.

M., who was described in the application for insurance as "Superintendent of the International Railway," was insured by the company appellant against accidents. By one of the conditions of the policy it was stipulated as follows: "The insured must at all times observe due diligence for personal safety and protection, and in no case will this insurance be held to cover either death or injuries occurring from voluntary exposure to unnecessary or obvious danger of any kind, nor death or disablement from getting or attempting to get on or off any railway train, etc., while the same is in motion." M., when travelling on the business of his railway, was killed while getting on a train in motion.

Held, that inasmuch as M. was insured as superintendent of a railway, and there was evidence that his duties required him to get on and off trains in motion, of which fact the insurers had knowledge, the condition did not apply, and the company was liable.

SUPERIOR COURT OF MONTREAL.

[Oct. 30.

COTTINGHAM v. GRAND TRUNK RY. CO.

Carrier—Goods refused by consignee—Sale by carrier.

Where the consignee refuses to accept goods from the carrier at the place of delivery, the carrier is not justified in selling the same by private sale without notice to the consignor or consignee; and a pretended authorization to sell by the consignee who has refused to accept the goods is without effect. The consignor in such a case is entitled to recover the value of the goods, less freight and storage.

MANITOBA.

COURT OF QUEEN'S BENCH.

Full Court.]

[Feb. 13.

MARTIN v. "THE FREE PRESS."

Libel—Fair comment—Justification—Verdict rendered under misapprehension.

Held, (1) that where a defence of fair comment is set up, what is commented on must be facts admitted or proved to be true; publication of defamatory matter in the belief that it is true is no justification; an alleged libel which contains imputations on private character exceeds the limits of fair criticism: *Campbell v. Spottiswoode*, 9 B. & S. 769; and *Davis v. Shephard*, 11 App. Cas. 187.

(2) Where there is a plea of justification on the record, the plaintiff may, if he chooses, in the first instance meet the justification, or leave such proof until the reply, but cannot divide his proof by calling evidence to meet the justification in the first instance, and more in reply, *Brown v. Murray*, R. & M. 254; and there is no difference where the plea is fair comment.

Quere: Whether under such a plea as the above the defendant is entitled to prove that a direct charge, such as the above, is true?

(3) Where it is clear, as in the present case, from the verdict of the jury, that they did not understand the judge's charge, or disregarded it and did not consider the question it was essential for them to consider and pass judg-