

ceiving legal advice from them by the letters written by them to him: *Gardner v. Irvin*, 4 Ex. D. 49; *O'Shea v. Wood*, [1891] P. 286; and *Ainsworth v. Wilding*, [1900] 2 Ch. 315. This decision goes beyond *Hoffman v. Cremer*, 17 P. R. 405, but that case did not go as far as the authorities require. Appeal allowed. Defendant Preston to file a better affidavit. Costs in the cause.

Simpson & Rowland, Sault Ste. Marie, solicitors for plaintiff.

Hearst & McKay, Sault Ste. Marie, solicitors for defendant.

STREET, J.

MARCH 8TH, 1902.

CHAMBERS.

MORRISON v. GRAND TRUNK R. W. CO

Discovery—Examination of Officer of Corporation—Railway Company—Engine-driver—Rules 439, 461.

An engine-driver is not an officer of a railway company examinable for discovery under Rule 439, especially having regard to the provision of Rule 461 (2) that his examination would be evidence against the company.

Appeal by defendants from order of Master in Chambers for examination by plaintiff of one Spratt, an engine-driver of defendants, for discovery, as an officer of the defendants. The action was brought by the widow of a conductor who was killed while in charge of a passenger train of defendants, to recover damages for his death. Spratt was the driver in charge of the engine of the train in question. One Costello, the defendants' roadmaster at the place of the accident, was present and took charge of the train, in place of deceased, when it proceeded.

D. L. McCarthy, for defendants.

J. G. O'Donoghue, for plaintiff.

STREET, J.—It is important to bear in mind the provisions of Rule 461 (2). . . . Under this Rule the examination of every one who is examined as an officer of the corporation is treated as evidence against the corporation in the same manner and to the same extent as the examination of a party is treated as evidence against himself. The result is, that a plaintiff in an action against a corporation has the advantage in many cases of giving important evidence against the defendants by means of the depositions, taken out of Court, of so called officers of the corporation, who may be unfriendly to it, and who are not seen by the jury unless called by the corporation as its own witnesses. We should not extend the meaning of Rule 439 to any class