

the defendant company were not officers of the company examinable for discovery under Rule 487, in an action for damages arising out of a railway accident.

Walter Read for plaintiff.

Douglas Armour for defendants.

Court of Appeal.]

[Jan. 14.

LEITCH v. GRAND TRUNK RY. CO.

Discovery—Examination of officer of railway company—R.S.O., 1877, c. 50, s. 156, (Rule 487)—Railway conductor—Reading depositions at trial.

An appeal from the decision of the Queen's Bench Divisional Court, 12 P.R. 671, that the plaintiff had the right to examine for discovery, as an officer of the defendants the conductor of a train of the defendants through whose alleged misconduct the plaintiff was injured, was dismissed by reason of the disagreement of the Judges in this Court.

Held, per HAGARTY, C.J.O., and BURTON, J.A., that the conductor was not examinable as an officer under R.S.O., 1877, c. 50, s. 156 (Rule 487); and per OSLER and MACLENNAN, JJ.A., that he was examinable.

Per BURTON, J.A.—The only officers intended by s. 156, were such officers as might under the former system have been properly made defendants for discovery merely. The examination sought was not really for discovery; it was a fishing inquiry to ascertain before the trial what precise evidence a particular witness would give.

Per OSLER, J.A.—The test of the propriety of allowing an officer or servant of a corporation to be examined for discovery is his ability to give the necessary information. A person who is entrusted with the charge of a railway train in the course of its transit, the conductor of the train, is, as to that particular occasion, and for that particular purpose, to be regarded as an officer of the corporation as distinguished from a mere servant, no matter how temporary his employment or how summary the corporation's power of dismissal.

Moxley v. Canada Atlantic Railway Co., 15 S.C.R., 145, discussed.

Semble, per OSLER, J.A., that the depositions of an officer of a company upon examination for discovery can only be read against the company

at the trial, if at all, when they have taken part in the examination.

Aylesworth for appellants.

W. R. Meredith, Q.C., for respondent.

ROBERTSON, J.]

[Feb. 3.

MONK v. BENJAMIN.

Parties—Mortgage action for foreclosure—Wife of assignee of mortgagor—Costs—Appeal from taxation—Amount involved.

The wife of a person to whom the mortgagor conveys his equity of redemption is not a proper party to an action by the mortgagee for foreclosure.

Semble, if such person died after judgment, but before final order of foreclosure, his widow would have a right to redeem and might be made a party. An appeal from taxation of costs was entertained in Chambers where the amount involved was only \$5.32, for the reason that a question of principle was raised.

J. C. Hamilton, for plaintiff.

R. A. Dickson, for defendants.

FERGUSON, J.]

[Feb. 10.

LEACH v. GRAND TRUNK RY. CO.

Discovery—Examination of officer of railway company—Engine driver.

Held, following *Knight v. Grand Trunk Ry. Co.*, ante p. 90, that a servant of the defendant company who was driving a detached engine of the company when it knocked down and killed the man for whose death the action was brought, was not an officer of the company examinable for discovery under Rule 487.

J. W. McCullough, for the plaintiff.

Aylesworth, for the defendants.

Law Students' Department.

EXAMINATION BEFORE HILARY
TERM: 1890.

FIRST INTERMEDIATE.

Anson on Contracts—Statutes.

Examiner—R. E. KINGSFORD.

1. What are the requirements in an offer and an acceptance, respectively, as elements of contract?