

And where, under such circumstances, the plaintiff was put off a train by a conductor on the defendants' railway, a nonsuit entered by the trial judge was set aside and a new trial ordered.

Valentine MacKenzie, Q.C., for the plaintiff.

Osler, Q.C., for the defendants.

ERDMAN v. TOWN OF WALKERTON.

Evidence—Action for negligence resulting in injury to person—Death of person injured before trial—Examination de bene esse—Subsequent action by executrix under R.S.O., c. 135—Admissibility of depositions taken in former action—Order in Chambers.

The plaintiff's husband was personally injured by an accident which occurred in a highway belonging to the defendants, and brought an action for damages, alleging that the accident was owing to the defendants' negligence in not keeping the highway in repair. Under an order made in that action, upon his own application, he was examined *de bene esse* as a witness in his own behalf, and cross-examined by the defendants, and died before the action came to trial. His widow then brought an action under R.S.O., c. 135, Lord Campbell's Act, as executrix, for the death of her husband, alleging that it was caused by the negligence of the defendants in not keeping their highway in repair.

Held, that the two actions related to the same subject and involved the same material questions, and that the present plaintiff was to be regarded as claiming under her deceased husband; and therefore that the evidence taken in the former action was admissible in the present.

Held, also, that an order in Chambers providing that the evidence in question might be read at the trial, saving all just exceptions, was properly made.

Sharv. Q.C., for the plaintiff.

Aylesworth, Q.C., for the defendants.

H. P. O'Connor, Q.C., for Heughan, a third party.

IN RE PERRAS v. KEEFER.

IN RE BARRY v. KEEFER.

IN RE ANDREWS v. KEEFER.

Prohibition—Division Court—Attachment of debts—Assignment of debt attached—Trial of question of validity of assignment—Assignee not called upon as claimant—Submitting to jurisdiction of court—Amount in controversy—R.S.O., c. 51, s. 197.

Each of the three primary creditors began an action in a Division Court against the primary debtor for the recovery of an amount within the jurisdiction of the court, and also attached in the hands of garnishees the amount of the debt in each case, the sum of \$500 having been admittedly due by the garnishees to the primary debtor, who, however, asserted that before the actions were commenced he had assigned the debt for valuable consideration to J.