

an actual seizure and, (2) following *Reid v. Explosive Company* (1887), 19 Q.B.D. 264, the appointment of a manager and receiver by the debenture holders operated as a discharge of the plaintiff, and he could not recover.

*Davis*, K.C., for appellants (defendants). *S. S. Taylor*, K.C., for respondent (plaintiff).

Full Court.]

[Nov. 7, 1906.]

FERNAN *v.* MONITOR & AJAX FRACTION.

*Practice—Evidence—Commission—Examination of witness resident out of jurisdiction—Application by defendant.*

Plaintiff sued for damages for dismissal and for an alleged breach by defendants of a certain agreement between the parties. Defendants counterclaimed for damages caused by plaintiff through his wilful disobedience, and also charged him with negligence and incompetence. Rosslund was chosen as the place of trial. Defendants took out a summons for a commission to issue to take the evidence of one Brockman, defendants' chairman and managing-director, resident in England, and other witnesses there, which summons was dismissed by Forin, Lo. J.S.C., in so far as taking the evidence of Brockman was concerned, on the ground that there was a counterclaim for a large amount, and that Brockman was the intermediary, as mentioned by Chancellor Boyd in *Kidd v. Perry* (1892), 14 Pr. 364, and should be examined in open court.

*Held*, reversing FORIN, Lo. J.S.C., that the witness required being the managing-director of the defendant company, and there being no guarantee that the company could get him to come into the jurisdiction, the commission should issue. So far as concerns the counterclaim, the plaintiff, when he brought his action, must have contemplated the probability of that being done.

*Davis*, K.C., for appellant. *J. A. Macdonald*, K.C., for respondent.

Clement, Co. J.]

[Nov. 9, 1906.]

VARESICK *v.* BRITISH COLUMBIA COPPER Co.

*Master and servant—Workmen's Compensation Act, 1902—“Dependants.”*

Sec. 8 of Sch. 2 to the Workmen's Compensation Act, 1902, provides for the recording of any award of compensation or of