

Rule absolute quashing conviction with costs to be paid by the private prosecutor.

J. W. Nesbitt, Q.C., for the defendant.

McBrayne, for the private prosecutor.

FERGUSON, J.]

[Jan. 13.

HENDERSON *v.* CANADA ATLANTIC R. W. Co.

Discovery—Examination of officer of railway company—Flagman.

A flagman in the employment of a railway company whose duty it is to give notice of danger to persons intending to cross a line of railway at a particular place, he being under the superintendence of the yard foreman, is not an officer of the company examinable for discovery at the instance of the plaintiff in an action against the company to recover damages for injuries sustained through the alleged neglect of the flagman to give notice of danger.

R. McKay, for the plaintiff.

D. L. McCarthy, for the defendants.

MEREDITH, C.J., C.P., }
ROSE, J., MACMAHON, J. }

[Jan. 14.

COLE *v.* HALLIDAY.

Division Courts—R.S.O., c. 51, s. 148—Practice—Appeal—Jurisdiction—Costs.

The plaintiff appealed from the judgment of a Division Court judge at the trial.

Held, that under the Division Court Act, s. 148, an appeal does not lie to a Divisional Court until a new trial has been applied for.

That the Court has power to give costs where proceedings are invoked to quash an appeal.

Appeal quashed. Costs as of a motion to quash fixed at \$10, to be paid by the plaintiff.

Clute, Q.C., for the plaintiff.

D. Armour, for the defendant.

BOYD, C.]

[Jan. 16.

BOYD *v.* SPRIGGINS.

Affidavit—Notary—Seal.

An affidavit sworn before a notary public in Ontario should be authenticated by his seal of office.

(Note.—This decision was not before Street, J., when he decided *Re Ryan, Ryan v. Sutherland*, ante 40, and he subsequently expressed his concurrence in the Chancellor's view.)