

should be made before trial, but the judge there, said he would treat the application at the trial as having been made before the trial—and I shall pursue the same course in the present instance, and treat the application by the plaintiff to read the examination for discovery of Mrs. Johnson as an application regularly made for that purpose before trial. There is nothing in principle or in authority to justify my admission of this examination to prove the case of the plaintiff here; and I accordingly reject it. My reasons briefly are: (1) the evidence could not be used at any stage of the action against the defendant upon any proceeding in the lifetime of the witness; (2) an examination for discovery is not an affidavit, so that Con. Rule 483 can apply; and (3) the rules provide for the use to be made of the examination for another—and *expressio unius est exclusio alterius*.

Turning now to the admissible evidence. The statement of defence puts everything in issue except that the defendant, on or about the 24th August, 1906, "secured from the plaintiff instructions to purchase for her 500 shares of the capital stock of the Boston Mines Company, Limited, at or for the price or sum of \$1 per share. The examination for discovery of the defendant sets out that he received a cheque for \$500 from the plaintiff about the 24th August, 1906, which he cashed; that he had an agreement with the company for some shares, but they are still "pooled" and so not issued; that Mrs. Johnson bought some of his 2,000 shares in August, 1906, and by August, 1906, he had been paid by her for them. No shares have been issued yet to her, because her solicitor didn't want it. He used the \$500 received as his own, and did not pay it to anybody as the price of shares in the company; he never offered her certificates for any shares; he never had them to offer: the only thing he had was his agreement; on the 27th July, 1908, he received a letter from the solicitor of the plaintiff that his authority to buy shares was revoked, and requiring him to return the \$500, which he refused to do.

Taking the admissions in the pleading and the examination together, it sufficiently appears that the defendant, having instructions from the plaintiff to buy for her 500 shares of the capital stock of the company, and having received \$500 from her for that purpose, did not buy for her 500 shares at all, but bought for himself 2,000 shares of pooled stock, out of which he intended to give her 500 shares (as being bought from himself) when the stock should be issued—and that, the defendant not having carried out his instructions exactly, his authority was revoked, and the money demanded back. . . .