should not be examined as a witness until the respondents had cross-examined those who had filed affidavits in support of the motion to quash.

H. L. Drayton, K.C., for the respondents.

Shirley Denison, for Ernest Fremlin.

LATCHFORD, J.:—The objection does not seem to me to be well founded. The decisions cited in support of it are based on a different principle. It is not, I think, open to a witness from whom evidence is sought to be obtained as of right, upon a motion of this kind, to say that other evidence should first be obtained. Ordinarily, no doubt, the adverse party would cross-examine the deponents. The respondents have, however, quite satisfactorily accounted for not cross-examining the laundrymen who made the affidavits. Any one who has observed the cross-examination of a Chinese witness through an interpreter—as it is sworn would be necessary in the case of the 3 deponents—knows the difficulty, if not the impossibility, of thus eliciting the truth.

I agree with the respondents that they could not improve their position by the cross-examination of the applicants or their fellow-countrymen. But I am of the opinion, at the same time, that they cannot hope to support the by-law by shewing that what the applicants have sworn in regard to their profits is untrue—that their profits have in fact been very large, as demonstrated by the amounts they have been remitting to China through the manager of the Dominion Express Co.

The true test, it seems to me, whether the by-law is valid or not, is whether the municipal council passed the by-law in the bona fide exercise of the powers conferred by sub-sec. 39 of sec. 583 of the Municipal Act.

The validity of the by-law depends, not on the profitable or unprofitable nature of the business of the applicants and others affected, but on the good faith of the council which passed the by-law: see Re Rowland and Town of Collingwood, 11 O. W. R. 805, and the cases there cited. In this view, the evidence sought from Mr. Fremlin cannot be relevant or material to the question at issue.

I therefore think the application fails. It is not a case for costs.