

pany and the statements, etc., of the auditors of the company, and "all other documents and papers in writing of the said company which may be called for on their examination, and that the said company do produce such books, papers and documents."

Grayson Smith, for the petitioners.

H. A. Burbidge, for the witnesses.

RIDDELL, J.:—Upon the argument, much was said by counsel opposing the motion as to the want of good faith on the part of the petitioners or one of them, the fatal defects in the petition, etc., etc. But with all that I have nothing whatever to do. The Chancellor has decided that these witnesses may be examined on this proceeding—ante 30—and, so long as that order stands, it must be held that the examinations are proper. See also *Re McLean Stinson and Brodie Limited* (1911), 2 O.W.N. 435.

Whatever may be the rule in England, our Con. Rules make it the duty of a person under examination to produce (if called upon) all books, papers, and documents which he would be bound to produce at the trial: Con. Rules 448 sqq., 490, 491, 492. These Rules have been in existence, in substance, for years.

I do not think that the order can be made as asked.

[Reference to *Alexander v. Irondale Bancroft and Ottawa R.W. Co.* (1898), 18 P.R. 20; *Russell v. Macdonald* (1888), 12 P.R. 458; *In re Emma Silver Mining Co.* (1875), L.R. 10 Ch. 194—distinguishing these cases.]

The principle is obvious—a witness is put forward by a party to a proceeding, who makes certain statements under oath; it is desired to shew by his own books or those of the person who puts him forward that his statements are not true. Such books must be produced to test his accuracy; when he is under cross-examination, they will be used for that purpose and to prove that his evidence is not to be relied upon. . . .

These cases are far from deciding that where a party desires to obtain evidence upon a motion, and subpoenas a person to give such evidence, he may also compel him to produce books, etc., to add to what he is to say—or to enable him to become possessed of facts not now within his knowledge.

I think the motion must be refused, with costs payable forthwith, as the witnesses are not parties to the petition.

I am by the company asked to dismiss the petition. This I cannot do. The Chancellor's judgment implies the validity of the petition. If the petition were of such a character as that it could be dismissed for the reasons advanced now by the company,