

KELLY, J., IN CHAMBERS.

MARCH 28TH, 1919.

JARVIS v. JAFFRAY.

Discovery—Examination of Defendant—Scope of—Information Obtainable from Strangers to Action—Examination of Persons for whose Benefit Action Said to be Defended—Rule 334—Persons Living out of Ontario.

An appeal by the plaintiff from an order of one of the Registrars, sitting in Chambers in lieu of the Master in Chambers, refusing to require the defendant to attend for re-examination for discovery and to answer questions in reference to the dealings of the defendants with brokers on the Montreal Stock Exchange and the dealings of these brokers relative to the sale and purchase of certain stock of the Montreal Light Heat and Power Company purporting to have been sold and purchased by the defendants as the brokers of the plaintiff; or, in the alternative, to allow the plaintiff to examine the Montreal brokers for discovery as persons for whose benefit this action was being defended.

T. R. Ferguson, for the plaintiff.

R. H. Parmenter, for the defendants.

KELLY, J., in a written judgment, said that the defendant Biggar had already been subjected to an exhaustive examination, and therein communications between the defendants and these Montreal brokers were produced. The plaintiff's counsel insisted on the defendants obtaining information as to what actually transpired in Montreal—what the Montreal brokers did; the defendants, while willing and offering to produce and disclose all information within their knowledge relating to these transactions, refused to go further and endeavour to obtain additional information from the Montreal brokers, over whom they had no control. When this was pressed for upon Mr. Biggar's examination, his counsel stated that the defendants had produced all the correspondence they had; and the witness stated that he would make a further search to see if the defendants had any additional correspondence, and, if anything additional were found, he was willing to produce it. In the circumstances, the witness went as far as he was bound to go; assuming, however, that if, on the search he offered to make, he should find further correspondence, he must produce it for the usual purposes under the Rules applicable to discovery.

The plaintiff was not entitled to the alternative order he asked for. Not being parties to the action, the Montreal brokers were