

the widow having already received \$1,000 for insurance on the husband's life being taken in consideration.

*Osborne*, for widow. *D. L. McCarthy*, for railway company. *Harcourt*, for infants.

Meredith, C.J., Maclaren, J.A.]

[March 30.

BEDELL & RYCKMAN.

*Practice—Discovery—Postponement of till prior questions disposed of—*  
*Con. R. 472.*

Appeal from an order of BRITTON, J., affirming an order of the Master in Chambers requiring the defendant to file a further and better affidavit on production, and to attend at his own expense to be further examined for discovery. The statement of claim displayed a single cause of action based upon the proposition that the defendant Cox and his associates as to the transactions detailed in it and the circumstances under which those transactions took place, stood in a fiduciary relation to the defendant company, which prevented them from making any profit for themselves out of the purchase of certain businesses acquired by them and afterwards transferred for a large sum of money to the defendant company, and the relief claimed was an account and payment by the individual defendants of the difference between the aggregate of the prices paid by them and what was paid by the company to them. It was admitted that the individual defendants received from the defendant company a sum in cash and stock far in excess of what they paid for the businesses, and the only matters really in controversy were the liability of the defendants other than the defendant company, to account for the profit made by them on the transfer to the company of the properties and if liability be established the amount for which they were answerable.

*Held*, that discovery as to the details of the expenditure made by the individual defendants in acquiring the businesses, should be postponed until their liability to account asserted by the plaintiff had been established. The practice of the Court, as a general rule, is to postpone consequential discovery until liability has been established. The English rule from which our Consolidated Rule 472 is taken was adopted for the purpose of making uniform the practice in the cases with which it deals, and to enable the Court in any case to postpone the consequential discovery until the right of the plaintiff should be established.

*W. H. Blake*, K.C., for appellant. *Riddell*, K.C., and *Lamport*, for respondents.