

RIDDELL, J., IN CHAMBERS.

DECEMBER 11TH, 1915.

*SHAW v. UNION TRUST CO. LIMITED.

*Discovery—Examination of Officer of Defendant Company—
Status of Shareholder as Plaintiff—Pleading—Cause of
Action—Company—Breach of Contract—Acts of Majority
of Shareholders—Ultra Vires or Fraudulent Conduct—
Scope of Discovery.*

Motion by the plaintiff for an order for the committal of the defendant J. M. McWhinney for contempt of Court in refusing (upon the advice of counsel) to answer certain questions upon his examination for discovery as an officer of the defendants the Union Trust Company Limited.

E. B. Ryckman, K.C., for the plaintiff.

G. H. Watson, K.C., and W. B. Raymond, for the defendants.

RIDDELL, J., said that the action was brought by Leslie M. Shaw, on behalf of himself and all other shareholders of the Blake Contracting Company other than the defendants, against the Union Trust Company Limited, the Blake Contracting Company, J. M. McWhinney, and others, for damages for breaches of trust and contract and for an injunction, an account, and other relief.

The real foundation for the refusal to answer was the contention that the plaintiff had no right to sue at all, and, therefore, no right to discovery.

It was decided in *Rogers v. Lambert* (1890), 24 Q.B.D. 373, that, whatever the state of the pleadings, a party is not allowed to compel answers which can be of no avail to advance his legal position. Questions concerning any matter which could not give, directly or indirectly, separately or in conjunction with something else, a cause of action, must be disallowed. This is the same in principle as the disallowance of examination upon matters which are alleged in the statement of claim, but can give a cause of action only if some other fact be first established: *Evans v. Jaffray* (1902), 3 O.L.R. 327; *Bedell v. Ryckman* (1903), 5 O.L.R. 670.

While there were in the statement of claim several more or less vague suggestions of direct dealing between the offending