

CARTWRIGHT, K.C., MASTER:—The facts of this case appear in a previous report in 23 O. W. R. 646. The examination for discovery of one of the defendants and also of defendant Lawson have been since taken. That of the latter has been taken in three divisions, and the last was on 24th December, “adjourned *sine die* to be resumed at a time to be arranged by counsel.” This adjournment was because plaintiff’s counsel wished to move “to compel answers to the questions refused.” This course has not been taken. Instead the plaintiff makes this motion—something new in my experience. It will be sufficient at present to deal with Mr. Lawson’s affidavit.

The motion is based on the examination of defendant Lawson, which I have read. The only grounds on which an affidavit on production can be impeached are set out in the judgment in *Ramsay v. Toronto Rw. Co.*, 23 O. W. R. 513.

Mr. MacGregor was of opinion that Lawson’s examination entitled plaintiff to the production of various documents which are no doubt relevant to the case. The only point for decision at present is whether they or some of them should appear in Lawson’s affidavit.

This seems decided by the depositions of Mr. Lawson himself. He admits in answer to question 421 *et seqq.* that in other and contemporaneous transactions he appeared as the purchaser both in the agreements and in the deed, and in some cases he gave mortgages back (qu. 431); also that in some cases he gave his own cheques in payment (qu. 456), having first been furnished with funds for that purpose (qu. 457), though he says he does not know who supplied them. At qu. 476 he was asked why he had not included these cheques at least in his affidavit on production. His counsel answers: “Because they are not relevant.” But that position cannot be successfully taken, in my view, when the questions were answered without objection which brought out the facts of their being in existence. This may not be conclusive, but counsel was in other matters prompt to object to what he thought irrelevant.

It would appear from the statement of claim and from the trend of Lawson’s examination that plaintiff expects to shew that Lawson was not personally liable, as he says; but that on the contrary he was acting in these other matters as in the one in question, as agent for the undisclosed principal called