

tiffs were before the Court which pronounced the judgment. The defendant pleaded that the judgment was obtained by fraud of the plaintiffs, but no particulars of the fraud had been given, though an order for particulars had been made. It was further alleged that the plaintiffs were indebted to the defendant for commission. The Master said that the books of the plaintiffs would be essential for the purposes of establishing the defence; but in an action upon a foreign judgment the defendant must shew some fraud before he can go behind the judgment into the merits. As no particulars of the alleged fraud had been given, the motion was at least premature, as it was impossible to say whether any investigation of the plaintiffs' books would be relevant: *Parker v. Wells*, 18 Ch. D. 485, 487; *Graham v. Temperance and General Life Assurance Co.*, 16 P. R. 536. Motion dismissed, subject to renewal when the cause is at issue, if the defendant is so advised. Costs in the cause. M. Lockhart Gordon, for the defendant. J. D. Falconbridge, for the plaintiffs.

CASWELL v. TORONTO R. W. CO.—MASTER IN CHAMBERS—
MAY 27.

Discovery—Examination of Servant of Defendant Company—Second Examination—Rule 439 (a) (2)—Costs.—Motion by the plaintiff under Con. Rule 439 (a), clause 2, for an order for leave to examine for discovery, as an officer or servant of the defendant company, the conductor of a car of the defendants in which the plaintiff was a passenger when she sustained injury by a fall in the car on account of which this action was brought for negligence. The motorman of the car had already been examined for discovery, but it turned out that he did not see the accident. It was admitted that the plaintiff was injured by a fall in the car. The Master said that, following the principle of *Dawson v. London Street R. W. Co.*, 18 P. R. 223, and *Clarkson v. Bank of Hamilton*, 9 O. L. R. 317, the order should be made; but, as the motorman was examined at the plaintiff's suggestion, the costs of the order and the examination thereunder should be costs to the defendants in any event. J. W. McCullough, for the plaintiff. Frank McCarthy, for the defendants.