

MIDDLETON, J. IN CHAMBERS.

DECEMBER 27TH, 1911.

VANHORN v. VERRAL.

*Discovery—Examination of Defendant—Disclosing Names of Witnesses—Collision—Driver of Motor-Car—Passengers in Car—Scope of Discovery—Duty of Party to Inform himself—Dismissal of Driver—Reason for.*

An appeal by the defendant from an order of the Master in Chambers, ante 337, directing further discovery.

W. G. Thurston, K.C., for the defendant.

J. W. McCullough, for the plaintiff.

MIDDLETON, J.:—Three different matters were discussed. The accident giving rise to the action was a collision between the plaintiff's waggon and the defendant's automobile. On the examination the defendant declined to give the name and address of the driver of the automobile. In this he was wrong.

He also declined to give the names of the passengers in the automobile. I do not think he was bound to give this information, even assuming that he has it in his possession or power.

Potter v. Metropolitan R.W. Co., 28 L.T.N.S. 231, is in point. There the Common Pleas (Bovill, C.J., Keating, Grove, and Honyman, JJ.) allowed an interrogatory as to the names of the driver of the engine and of the servants who accompanied the plaintiff home after the accident, but refused to allow the interrogatory, "Did any and what servant or servants of the defendants witness the occurrence?" This was regarded as a "fishing" interrogatory, and its impropriety is pointed out.

The motion is based upon a statement in the course of the judgment in Caswell v. Toronto R.W. Co., 24 O.L.R. 339, at p. 353: "It does not appear even that the defendants were asked for any information as to the persons who saw the accident." This is a mere dictum in the course of a judgment pointing out that no case had been made for a new trial. I do not think this remark can be taken to overrule the well-settled law that the names of persons who may be witnesses are not to be disclosed, unless material to the case intended to be set up, *e.g.*, in actions of slander, where the speaking of the words to a particular person or persons is of the gist of the action.

This is only a particular application of the general rule that discovery must be confined to the matters in issue in the action. The issues in this action relate to the happening of the accident and the negligence of the parties; and the fact that there may