meaning of the Ontario Insurance Act, R.S.O. c. 203; that the rules of the Order, so far as they were inconsistent with the provisions of the Act, were modified and controlled by such provisions; and therefore the benefits of the certificate passed by virtue of the will to the legatee, although the rules of the Order provided that no will should be permitted to control: *In re Harrison*, 31 O.R. 314, followed.

Kilmer, for plaintiffs. *Watson*, K.C., for defendant.

Boyd, C., Ferguson, J.] [Feb. 25

SHARP *v.* GRAND TRUNK R.W. Co.

Security for costs—Nominal plaintiff—Administrator—Fatal Accident Act, R.S.O. c. 166.

An administrator appointed for the purpose of bringing an action for the benefit of another under s. 3 of the Fatal Accident Act, R.S.O. c. 166, is not a mere nominal plaintiff bringing such action for the benefit of somebody else, in the sense of the rule which entitles a defendant to security for costs upon shewing that such nominal plaintiff is also insolvent.

So *held* by MEREDITH, C.J. (dubitante), and by a Divisional Court, in a case where, if the action had been brought in the name of the person beneficially entitled, he would have been required to give security for costs, because out of the jurisdiction, which gave ground for suspecting that the actual plaintiff was put forward for the purpose of enabling the person beneficially interested to escape liability.

L. G. McCarthy, for defendants. *Heighington*, for plaintiff.

Meredith, C.J.] CLARKE *v.* RUTHERFORD. [March 1

Discovery—Examination for—Second trial—Rule 439.

A party to an action may be orally examined before the trial touching the matter in question: Rule 439.

Held, that a trial which has proved abortive by the disagreement of the jury or by the granting of a new trial, is not a trial within the meaning of the Rule: *Leitch* v. *Grand Trunk R.W. Co.*, 12 P.R. 541, 671; 13 P.R. 369, considered.

Where the defendant had not been examined before the first trial, and the judgment thereupon had been set aside and a new trial ordered, the plaintiff was allowed to examine the defendant before the second trial.

Semble, that if there had been an examination of the defendant before the first trial, a second examination might be an abuse of the process of the court.

Strachan Johnston, for plaintiff. *L. G. McCarthy*, for defendant.