

C. M. Colquhoun, for defendant's motion.

E. F. Raney, for the plaintiff, contra.

CARTWRIGHT, K.C., MASTER:—This action was tried together with a cognate one of *Rickey v. City of Toronto*, on the 3rd and three following days of last month. It was then adjourned until 28th April inst., in order to have the Toronto Harbour Commissioners added as defendants.

A formal order was made by the trial Judge, which must be considered to have made all necessary provisions and directions so that the case could go on at the appointed time. No mention is found there of any further examination for discovery by either party. But on 31st March, plaintiffs took out an appointment for examination of an officer of the city. This is now sought to be set aside as being issued without authority.

These cases are no doubt of great importance to the plaintiffs. But this does not authorize any deviation from the practice.

The only decision on the point is that of *Wade v. Tellier*, 13 O. W. R. 1132, which seems precisely in point. As was pointed out there in *Clarke v. Rutherford*, 1 O. L. R. 275, it was apparently assumed that an examination for discovery must precede the trial. And this seems to follow from the ground of the proceeding itself, which is to enable the examining party to prepare for the trial. Once this has begun there can be no examination without an order being had for that purpose. Here if deemed necessary such a term should have been applied for at the adjournment; and the order then made must be deemed to have contained all that either party was entitled to. In *Standard Trading Co. v. Seybold*, 6 O. L. R. 379, at p. 380, in a case where there had been a postponement of the trial it was said "Then was the time when all terms—should have been discussed," per Osler, J.A.

The motion is, therefore entitled to prevail, especially as two officers of the defendant corporation were examined for discovery, one of them on two occasions.

Mr. Colquhoun also on the argument agreed to furnish plaintiffs' solicitors with all correspondence relative to the bridge over Keating's cut as soon as it came into his hands.

The costs of this motion will be to defendants in the cause.