and discovery which are defined by the rules, and judges as well as suitors are bound by them. There is no law which authorizes me to say that the plaintiff here must submit to a species of examination entirely unprovided for by any statute or rule of court; such an order must be founded upon some authority, either in the common law or the statutes, or it could not be enforced, and I find none.

"There are American decisions both for and against the granting of such orders. See Walsh vs. Sayre, 52 How. Pr. Rep. N. Y. 334 (1868); Roberts vs. Ogdensburgh, &c., R. R. Co., Hun. 154 (1883); White vs. Milwaukee City Ry. Co., 61 Wis. 536 (1884): Patterson's Railway Accident Law, sec. 367.

"There may, no doubt, be cases in which, upon the ground of plain and palpable fraud, a judge sitting at nisi prius might, in his discretion, postpone the trial of an action in which damages are claimed for any accident, unless the plaintiff should consent to an examination; but, as a rule, a party whose cause of action is matured, whose damage is ascertainable so far as it is ever likely to be, and who is not in default in obeying any order of the court, is entitled to have his case tried, unless a postponement is rendered necessary for any of the ordinary reasons."

On the 4th of May, 1891, succeeding this decision, the following act was passed in Ontario, 54 Vic., ch. 11 (O.), which is the present law of that province upon the subject:—

"In any action brought to recover damages or other compensation for or in respect of bodily injury sustained by any person, a judge of the court wherein the action is pending, or any person who by consent of parties, or otherwise, has power to fix the amount of such damages or compensation, may order that the person in respect of whose injury, damage or compensation is sought, shall submit to be examined by a duly qualified medical practitioner, who is not a witness on either side, and may make such order representing such examination, and the costs thereof, as he may think fit; provided always that the medical practitioner named in such an order shall be selected by the judge making the order, and provided, moreover, that such medical practitioner may afterwards be a witness, on the trial of any such action unless the judge before whom the action is tried shall otherwise direct."

Then follows the latest case, Clouse v. Coleman, 160 P. R., p. 541. Judgment delivered by the Court of Appeal, 25th June, 1895.

Osler, J.A.—"The action is for injuries sustained by the plaintiff in consequence of the alleged negligence of the defendant's servant. The Master in Chambers made an order that the plaintiff attend and be examined by the medical practitioner specified therein. The plaintiff attended, but refused to answer any questions. The Master then made a further order that the plaintiff attend and answer questions which might be put to him as to his past state of health and past symptoms. This order the Queen's Bench Division reversed, and the defendant now moves for leave to appeal from this order.

The act under which the original order of the Master in Chambers professed to be made, 54 Vic., ch. 11, O., was evidently passed in consequence of the decision in Reily v. City of London, 14 P. R., 171, and is in effect taken from the 26th section of the Regulation of Railways Act, 1868 (Imp.), though the latter is confined to injuries arising from accidents on a railway, while our Act is general in its application.

"The recommendation intended by the Act is, in my opinion, a physical examination by the medical practitioner by touch or sight, of the bodily injuries of the individual injured. The complainant is to be examined *by* not *before* the medical practitioner who is not required to report the result of the examination to the court. The examination is not one taken on oath or in writing, nor does it seem to have been intended that any record should be made or kept of it. If the object of the Act is regarded, a