

judgment. The counterclaim of Mrs. Cook is dismissed with costs, setting up as it does the contention of the residuary legatees which fails in all points.

This judgment may be without prejudice to the raising of accounts of the estate before the Surrogate Judge, and the reason of any contention there surcharging or falsifying accounts as between the executors, the costs of which he will dispose of.

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HON. MR. JUSTICE RIDDELL.

NOVEMBER 9TH, 1912.

CHAMBERS.

ROGERS v. NATIONAL PORTLAND CEMENT CO.

4 O. W. N. 299.

*Discovery—Examination of Plaintiff—Default—Failure to Justify—*  
*Con. Rule 454.*

Motion by defendant under Con. Rule 454 to dismiss action for failure of plaintiff to attend for examination for discovery. Plaintiff had no reasonable excuse to offer for non-attendance.

MASTER-IN-CHAMBERS ordered that plaintiff attend at his own expense on 48 hours' notice to his solicitors. Costs of motion to defendants in cause.

RIDDELL, J., dismissed appeal from above order, costs to defendants in any event of cause.

Appeal from order of Master in Chambers, *ante* 218.

F. R. McKelcan, for the motion.

J. Grayson Smith, contra.

HON. MR. JUSTICE RIDDELL:—In this case I entirely agree with the Master in Chambers, and have nothing to add to what he has said.

Appeal dismissed with costs to the defendant in any event.