that in an ordinary case it is too late to ask for production or discovery when the trial has begun.

Rule 439 speaks of examination "before the trial," and Rule 464 directs a procedure which would seem to contemplate production as soon as the cause is at issue.

In Clarke v. Rutherford, 1 O. L. R. 275, it seems to have been assumed that an examination for discovery must precede the trial.

By sec. 34 of the Act R. S. O. 1897 ch. 153, sec. 34, it may be that the officer by whom an action is being tried has control of the whole procedure once he is seised of the case. In my opinion, he certainly has that power. This seems to be borne out by sec. 43, which seeks to keep down costs. This is one object of the procedure in these cases, as pointed out in Cobban v. Lake Simcoe Hotel Co., 5 O. L. R. 447, at p. 448, 2 O. W. R. 310, where it is also said that "it is competent to have examination (for discovery) in proper cases."

Under the special facts of this case, it may well be that the plaintiff should have full discovery even now. An application for that purpose to the official referee will, no doubt, be duly considered. But it is to him the application should be made, conformably to secs. 34 and 43 of the Mechanics' Lien Act.

The motion is entitled to prevail; but the order will be without prejudice to an application to the referee, by whom the costs of the motion can also be best disposed of, as he will have the whole facts before him, and the case is one of some difficulty for the plaintiff to handle.

RIDDELL, J. MAY 3RD, 1909.

CHAMBERS.

REX v. GRAF.

Criminal Law—Selling Obscene Books and Pictures—Magistrate's Conviction upon Summary Trial—Power to Amend—Criminal Code, Part XVI.—Habeas Corpus—Certiorari in Aid—Defective Warrant of Commitment—Substitution of Proper Warrant—Costs of Attorney-General—Punishment for Offence.

After the delivery of the opinion of RIDDELL, J., in this case, ante 943, a proper warrant was lodged with the warden