THE MASTER:—The first branch of the motion was made under a misapprehension, as the time for the return is the date on or before which it must be executed and despatched by the commissioner. It does not mean the date at which it must reach the central office: see *Darling* v. *Darling*, 9 P.R. 560, a decision of the present Chancellor on appeal from the contrary opinion of the Master in Ordinary (Taylor): see Con. Rule 512.

As to the other branch, it is, so far as I know, or can ascertain from inquiries of the oldest inhabitants of Osgoode Hall, the first application of the kind in this province.

The ground taken is that the commissioner was a solicitor, and that his partner appeared on behalf of the plaintiffs on the execution of the commission.

It was contended that, as the commissioner had to administer the oath to the witnesses, our Con. Rule 522 should be applied. The cases on this rule are given in Holmestead & Langton's Judicature Act, at p. 727. That of *Wilde* v. *Crow*, 10 C.P. 406, seems adverse to the motion.

The following cases were also cited and relied on: *Fricker* v. *Moore* (1730), Bunbury 289, where the court suppressed the depositions because taken before the plaintiff's solicitor, who was one of the commissioners; *Re G. M. Selwyn* (1779), 2 Dick. 563, for similar reasons; *Sayer* v. *Wagstaff* (1842), 5 Beav. 462, where it was said by Lord Langdale, M. R., that a commissioner should not act as solicitor for either party after his appointment.

The practice in England at these dates, as at present, is set out in Odgers on Pleading, 5th ed., c. 17, p. 268 et seq. It is so entirely different from ours that the English cases have little, if any, application on the present motion. If it was known beforehand what questions were going to be put up to the witnesses, who would then have their answers settled beforehand by their solicitors and counsel, it would be clearly improper for the partner of a commissioner to act for either party or for such a commissioner to be named by the examining party. At p. 279 Odgers says: "The answers (to interrogatories) must be carefully drawn." So, too, objections may be taken to the interrogatories, and apparently they too are prepared in the same careful way. It would seem to follow from this radical difference in the English practice that objections which would be fatal there would have little or no weight here.

Mr. Arnoldi has been cross-examined on his affidavit, and I have seen the depositions. He states that he does not know if any member of the commissioner's firm had been acting as