

ROBERTSON, J.]

MCCLARY v. PLUNKETT.

[Oct. 27.]

*Costs—Examinations for discovery—Rule 1177, rescission of—Rule 1384, effect of on pending actions—Order for costs—Trial judge.*

By Rule 1384, Rule 1177 was rescinded, and a new Rule substituted providing that the costs of every interlocutory examination should be borne by the examining party, unless otherwise ordered.

In an action begun before the passing of the Rule, but tried and judgment given after the passing;

*Held*, that the new Rule applied, and the taxing officer had no power to tax to the successful plaintiff the costs of examining the defendants for discovery without an order therefor.

Application for such order should be made to the trial judge at the trial or immediately after judgment.

*J. E. Jones* for the plaintiff.

*Waldron* for the defendants.

Court of Appeal.]

[Nov. 13.]

BEATON v. GLOBE PRINTING CO.

*Discovery—Rule 566, scope of—Examination of plaintiff before delivery of defence—Libel.*

Rule 566 does not apply to examinations for discovery, and cannot be made available to authorize an examination not provided for by Rules 487-506.

*Fisken v. Chamberlain*, 9 P.R. 283, overruled.

But were that Rule applicable, it was not "necessary for the purposes of justice," in the circumstances of this action for libel, to make an order allowing the defendants to examine the plaintiff for discovery before delivering their statement of defence.

Decision of the Common Pleas Division, 15 P.R. 473, reversed.

*Tate v. Globe Printing Co.*, 11 P.R. 251, specially referred to.

*Gourley v. Plimsoll*, L.R. 8 C.P. 362, and *Zierenberg v. Labouchere*, (1893) 2 Q.B. 183, followed.

*Lynch-Staunton* for the appellant.

*Osler, Q.C.*, and *H. M. Mowat* for the respondent.

### Queen's Bench Division.

BOYD, C.]

ARGLES v. MCMATH.

[Oct. 29.]

*Landlord and tenant—Fixtures—Lease—Short Forms Act—Covenants.*

Under a lease pursuant to the Short Forms Act, containing covenants by the lessee to repair and to leave in good repair, he cannot, having regard to the extended meaning of the covenants, remove at the end of the term fixtures erected by him for the purposes of trade.