

may give upon the examination now in contemplation, it may be of the greatest moment that the Master should have the advantage of observing his demeanour as a witness and of controlling the conduct of his examination. . . . The Rules rather seem to contemplate that all evidence upon a reference shall be given *viva voce* before the Master or referee, unless upon special grounds it should be otherwise ordered: Rule 484.

The Master cannot direct the issue of a commission in which he shall himself be named as commissioner. It is possible that he could under Rule 485 make an order for the attendance of defendant for examination before himself at New York. This Rule, however, differs somewhat from the corresponding English Rule, No. 487, which enables the Court or a Judge to make an order for the examination of any witness or person before "the Court or Judge or any officer of the Court or any other person and at any place," whereas our Rule empowers the Court or a Judge to direct such examination "before any officer of the Court or any other person and at any place"—not contemplating, apparently, that such examination should be had before the Court or Judge pronouncing the order.

But the Court or a Judge under Rule 499 (1) may direct that a commission should issue for this purpose, and I see no reason why, in such a case as the present, the Master should not be named as the commissioner. The expense of having the Master himself execute such a commission will be only slightly, if at all, greater than would be entailed were the commission directed to some suitable person resident in New York. Probably both parties will consent to an order being pronounced for the issue of a commission to the Master. If not, and if plaintiff desires it, such order may issue upon plaintiff filing a certificate of the Master that it is, in his opinion, desirable that the examination of defendant should take place in his presence. Otherwise the Master may exercise the power conferred upon him by Rule 499 (2).

Success upon this appeal being divided, there will be no costs to either party. The costs of the commission, if issued to the Master, will be costs in the reference.