

these were specified in argument before the Master. Plaintiff had in fact already specified them in writing upon a former abortive attempt to procure the examination of defendant. He must, he concedes, give formal notice of the items upon which he proposes to examine before proceeding with the examination: Daniel's Chy. Prac., 7th ed., p. 853. I should not, I think, interfere with the discretion exercised by the Master in determining that a preliminary examination of the defendant should now be had.

But I am unable to agree in his direction that defendant should attend for such examination at Ottawa. The proposed examination is said to be somewhat in the nature of an examination for discovery for the purpose of obtaining from defendant admissions, if possible, and, if not, such information as will the better enable plaintiff to prepare for and shape his case in the prosecution of the reference. The Court will not, under the code of Rules regulating discovery, require the attendance of a non-resident defendant at a point within the jurisdiction: *Lefurgey v. Great West Land Co.*, 7 O. W. R. 738. Although this code of Rules does not apply in the Master's office, yet the practice there should, I think, in such matters, by analogy, conform to the practice prescribed in regard to discovery. If, because of the right of a defendant not to be taken away from the locality of his residence for examination, the Court or a Judge will not require him to attend elsewhere for the ordinary examination for discovery, a fortiori it would seem that a Master or referee, in the conduct of a reference, should respect that right. The prima facie right of a non-resident defendant to have his testimony taken on commission for use at trial is well established. Moreover, Rule 499 (2) confers on the Master express power to direct that a commission shall issue to take this evidence, and in ordinary cases this is manifestly the practice which should be adopted.

But in the present instance the Master has apparently deemed it very desirable that the evidence of defendant should be taken before himself rather than before a commissioner to be appointed by him. If it were certain that defendant would appear as a witness before the Master at a later stage of the reference, it might not be so important that the Master should himself take the examination now proposed. But if, as is quite possible, defendant will not give any evidence upon the pending reference except such as he