

the snow and water coming down, and that the plaintiff stood in no higher position than the grantor; that the projection of the roof over the plaintiff's land carried with it the necessary consequence that water and snow falling upon the roof must to a large extent descend upon the land below, and the action was dismissed with costs.

Judgment of the County Court of the County of York reversed.

*Watson*, K.C., for the appeal. *Du Vernet* and *Vickers*, contra.

Master in Chambers.]

[March 24.

REX EX REL. ROSS v. TAYLOR.

*Municipal elections—Quo warranto proceeding—Cross-examination on affidavits—Discretion as to permitting.*

An application by the relator for an order allowing him to proceed and cross-examine the several persons who had made the affidavits filed by the respondent in answer to the affidavits filed by the relator in support of his motion in the nature of a quo warranto to void the election of respondent as reeve of the village of Port Dover. The application was heard by the Master in Chambers, March 21, 1902.

*W. M. Douglas*, K.C., for the relator.

*S. C. Biggs*, K.C., for the respondent, opposed the application on account of the great expense, which would exceed the amount of the relator's recognizance.

MASTER IN CHAMBERS—I have read all the affidavits filed, and, in my opinion, the application should not be granted. In *Reg. ex rel. Piddington v. Riddell*, 4 P.R. 80, the late Mr. Justice Morrison in delivering judgment said, at p. 85: "On the argument I was pressed by counsel for the relator to order further proceedings with a view to the oral examination of the parties, and the production of their books for the purpose of impeaching the facts sworn to by Clickinbroome and the defendant. I could only be warranted in doing so upon the ground that I consider the facts sworn to, to be untrue. I see no reason for my thinking so." In that case argument had taken place upon the affidavits filed; here no argument has been heard. I refer to the case to shew that it was a matter of discretion as to permitting the examination or not. In using this discretion I think that no examination would be helpful to me in considering the matter. The relator has the right to file affidavits in reply to those on behalf of the respondent. He will have an opportunity of doing so if he desires it, and the matter will stand adjourned for that purpose.

Meredith, C.J.]

[April 10.

PENNINGTON v. MORLEY.

*Mechanic's lien—Action begun by statement of claim—Service out of Ontario—Jurisdiction to allow.*

There is no authority in the Courts of this Province to allow service out of Ontario of a statement of claim filed as the initial step in an action.