

THE MASTER.—The language of Rule 439 (a), as amended by Rule 1250, does not provide for the present case. Whether the words allowing examination of a past officer were omitted intentionally or not, it is clear they have gone. If this was in any way a mistake, no doubt it will be remedied on attention being called to it in the proper quarter.

Mr. Ferguson submitted that there was power to order this examination under Rule 485. He sought to distinguish *Beaton v. Globe Printing Co.*, 16 P. R. 281, on two grounds: first, that the argument of Mr. Justice Osler (at p. 283) overlooked the language of Rule 7; and second, that all that had been decided was that Rule 485 did not allow the examination for discovery of a party before the usual time. But, looking at the whole judgment, I do not think it is to be limited in that way. The whole question is gone into both as to parties and witnesses, and it is laid down that the Rule gives no power to make such an order as was there in question (pp. 286 and 285, last paragraph).

The motion fails and must be dismissed. The costs will be in the cause, as the point arises now for the first time.

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SEPTEMBER 19TH, 1904.

DIVISIONAL COURT.

HEMPHILL v. TOWNSHIP OF HALDIMAND.

*Way—Non-repair—Objects Placed on Highway—Neglect of Municipality to Remove—Frightening Horse—Liability—Character of Horse—Contributory Negligence.*

Appeal by plaintiff from judgment of FALCONBRIDGE, C.J., 3 O. W. R. 605, dismissing action.

W. J. Tremear, for plaintiff.

E. C. S. Huycke, K.C., for defendants the Gaffields.

THE COURT (MEREDITH, C.J., IDINGTON, J., MAGEE, J.), dismissed the appeal with costs, agreeing with the judgment of FALCONBRIDGE, C.J.