

person only. By the judgment of the Superior Court an open commission was granted. Article 385 says: [Citation.] Article 385a was added to our Code and reads as follows: [Citation.]

Before this enactment all the interrogatories and cross-interrogatories had to be fixed by the Court, and no further questions could be put to the witness. Now the Court may allow the commissioners or the parties to put all questions they think relevant to the case. The powers given by this article seem identical to a certain point to the procedure followed in the case of articulations of facts as stated in article 366.

The legislature in enacting article 385a must have had in view that if the answers to the interrogatories fixed by the Court are not sufficient or not satisfactory to the parties or to the commissioners they may put further questions. The rogatory commission allowed under article 385a is not what we generally call an open commission as the interrogatories to be fixed by the Court are not dispensed with. Whether a party joins in the commission or not he is entitled to know what are the interrogatories which are to be submitted to the witness. In this case no interrogatories were ever submitted or settled by the Court and the examination was not made *ex parte*.

I am of opinion that the rogatory commission as allowed was illegal.

Moreover it is admitted that at the trial the defendant was present in Court. The plaintiff who had not the chance to cross-examine her on the evidence taken on the commission, made a special application to cross-examine her. This application was refused. I consider, under the circumstances, that the plaintiff, if the commission is-