motion would be read "the examination of the plaintiff to be taken before a special examiner."

On 15th October the plaintiff and counsel for him and the defendant attended before a special examiner to take the above examination. Plaintiff declined to be sworn, on the ground that this was an attempt to have discovery before the proper time. Counsel for defendant stated that he was not going to examine for discovery, but only on the question whether or not defendant was entitled to further and better particulars. But plaintiff still refused to be sworn, and the proceedings ended.

Defendant then moved to dismiss the action because of plaintiff's refusal to be sworn.

F. E. Hodgins, K.C., for defendant, cited Clark v. Campbell, 15 P. R. 338; McClennaghan v. Buchanan, 7 Gr. 92.

R. McKay, for plaintiff, cited Smith v. Odell, 6 O. W. R. 47, 179, and Dryden v. Smith, 17 P. R. 500, as shewing that a party cannot do indirectly what he cannot do directly; Hopkins v. Smith, 1 O. L. R. 659, and Miller v. Race, 16 P. R. 330, as shewing that it was proper to object to be sworn and so stop in limine an examination if it cannot be had in any case. He also relied on Beeton v. Globe Printing Co., 16 P. R. at p. 286.

THE MASTER:—The cases cited for plaintiff would be conclusive if any discovery was being asked. But any intention of that kind is disclaimed by Mr. Hodgins. Under Clark v. Campbell, 15 P. R. 338, it is clear that there are cases in which a party can be examined on a motion made by his opponent, and I cannot say that this is not one of them. What questions will be asked cannot be known (or usefully imagined) beforehand.

Plaintiff must attend and submit to be sworn. If any questions are asked which are considered improper, they can be dealt with under Rule 455 as practically followed.

The costs of this motion will be to defendant in the cause.