

Robertson, J.]

[Oct. 8.]

WHITE v. RAMSAY.

*Action for recovery of land—Joinder of other causes of action—Consolidated Rule 341.*

The plaintiff, without leave, joined other causes of action in an action for the recovery of land, contrary to Consolidated Rule 341.

Upon a motion by the defendant to set aside the writ of summons, the Master in Chambers made an order for the amendment of the writ by striking out the portion of the indorsement containing the other claims, upon payment of costs.

ROBERTSON, J., on appeal, upheld the Master's order.

Hoyle, for the defendant.

C. J. Holman, for the plaintiff.

Armour, J.]

[Oct. 9.]

MCLEOD v. SEXSMITH.

*Judgment under Con. Rule 756—Stage of action when ordered—Admissions in letters.*

An application for judgment under Rule 756 cannot be made until the right of the party applying to the relief claimed has appeared from the pleadings.

And an order made under that rule before the delivery of any pleading in the action based on admissions in letters, was set aside.

T. Langton, for the plaintiff.

C. J. Holman, for the defendant.

Mr. Dalton.]

[Oct. 12.]

ELLIOTT v. CANADIAN PACIFIC RAILWAY CO.

*Evidence—Sole witness of accident giving rise to action—Examination before trial.*

In an action under Lord Campbell's Act an order was made for the examination before the trial *de bene esse* on behalf of the plaintiff of the only witness to the accident which occasioned the death of the deceased. It was provided that the examination should not be used at the trial unless the plaintiff was unable to procure the attendance of the witness.

J. H. Ferguson, for the plaintiff.

D. Armour, and W. H. Wallbridge, for the defendants.

Boyd, C.]

[Oct. 16.]

FOSTER v. VANWORMER.

*Judgment debtor—Examination—Duty of debtor—Unsatisfactory answers—Notice of motion to commit.*

It is the duty of a party who is examined as a judgment debtor to furnish such explanation about his affairs as will place his dealings in an intelligible shape, and not leave his creditors to find out as best they may what it is the business of the debtor to make clear.

Nor is it enough for the debtor to say, touching any particular transaction, that he does not know or does not remember, if he has the means at hand to qualify himself to explain.

A notice of motion seeking relief against a party for giving unsatisfactory answers on his examination should particularize the answers complained of.

Precision should be used on the examination in ascertaining the exact state of facts, as shown in books or accounts, and care exercised that there is no uncertainty as to any dates or amounts in question, as the judge can only look at what is proved or admitted.

On the state of facts referred to in the judgment, the defendant was ordered to attend and be further examined at his own expense, and to pay the costs of the motion.

Ex p. Bradbury, 14 C. B. 15, and Ex p. Moir, 21 Ch. D. 61, followed.

Crooks v. Stroud, 10 P. R. 131; and Lemon v. Lemon, 6 P. R. 184; and Hobbs v. Scott, 23 U. C. R. 619, discussed.

A. R. Cressman and Macrae, for the motion.

Walter Barwick, contra.

Boyd, C.]

[Oct. 16.]

MCLEAN v. BRUCE.

*Examination—Proof of service of appointment and payment of conduct money—Examiner's certificate—Waiver.*

Upon a motion by the defendant to compel the plaintiff to attend again for examination, after his refusal to be sworn upon an appointment for his cross-examination, upon an affidavit filed on a pending motion, the only material filed was a certificate of the examiner, which did not show that due service of subpoena and appointment and payment of conduct money had been made.