sided in the jurisdiction, and a third, who was a foreigner, was implicated, service on the foreigner out of the jurisdiction of a notice in lieu of the writ of summons was

Held, properly allowed under Rule 271 (g).

Massey v. *Heynes*, 21 Q.B.D., at pp. 334, 335; and *Indigo Co.* v. *Ogilvy* (1891), 2 Ch. 13, specially referred to.

Such an order should not be made unless the judge is reasonably satisfied as to the *bona fides* of the plaintiff in joining the foreign defendant; and as an evidence of such *bona fides* the plaintiff in this action was required to undertake to submit to a non-suit if he failed to prove a joint cause of action at the trial as against the foreign defendant.

Perkins v. *Mississippi, etc., Co.*, 10 P.R. 198, not followed.

Thomas v. *Hamilton*, 17 Q.B.D., at p. 597, specially referred to.

A. McLean Macdonell for the plaintiff.

H. S. Osler for the defendant Rogers.

BOYD, C.] [Sept. 8.

HENDERSON *v.* BLAIN.

Discovery—Action by shareholders of insolvent bank against directors for misfeasance—Joining bank as parties—Examination of liquidator by plaintiff before statement of claim—Rule 566.

An official liquidator cannot, as an officer of the Court, be called upon to make discovery unless he is representatively in the position of an adverse litigant to the party requiring the discovery.

Where certain shareholders of an insolvent bank were suing the directors for negligence and misfeasance, and had made the bank defendants for conformity without asking any relief against them, an application by the plaintiffs under Rule 566 for leave to examine one of the liquidators for discovery before statement of claim was refused.

W. R. Smyth for the plaintiffs.

Hilton for the liquidators.

Shepley, Q.C., *F. E. Hodgins*, and *W. B. Raymond*, for the other defendants.

MANITOBA.

COURT OF QUEEN'S BENCH.

CASE MACHINE CO. *v.* LAIRD.

BAIN, J.] [July 27.

Parol evidence—Admissibility of, in collateral agreements.

Demurrer to plaintiffs' replication.

The facts appear from the

Judgment—

The rule that parol testimony cannot be received to add to, vary, or contradict a written instrument does not prevent parties to a written agreement, even if it be under seal, from proving that what is called a collateral agreement was made by parol in consideration that one of the parties would enter into the written agreement. The contention of the plaintiffs is that the agreement alleged in the defendant's pleas and counter-claim is not a collateral agreement, but that it contradicts and varies, and so is inconsistent with, the deed alleged in the declaration, and that, therefore, the defendant cannot rely on it unless it be by deed.

The agreement under seal that the plaintiffs declare on is, that the defendant is to pay $915 on the delivery of the machine, or, in lieu of such payment, to pay $300 on delivery and to give his three notes for $200, $200, and $215, payable with interest in January, 1891, '92, and '93 respectively, and that "failing to pay said money or execute and deliver said notes, this order shall stand as his written obligation and have the same force and effect as his note for all sums not paid in cash." The agreement alleged by the defendant is, in effect, that, in consideration that the defendant would enter into the agreement declared on and would make the cash payment and would deliver the three notes, the plaintiffs would take from the defendant a second-hand separator at the price of $200, and would give the defendant credit for the price on the note for $200 falling due in January, 1891.

I am of opinion that this agreement is one that is distinct from and collateral to the agreement under seal, and that the defendant is at liberty to prove it, if he can, though it be not under seal. Such an agreement does not seem to be in any way inconsistent with the principal