

creditors are entitled to the proceeds of the sale as against the assignee. In other respects, the appeal will be dismissed with costs.

WHELIHAN v. KEHOE—MASTER IN CHAMBERS—OCT. 24.

Judgment—Entry on Default—Motion to Set aside—Terms—Costs.]—Motion by the defendant to set aside a judgment signed by the plaintiff in default of delivery of a statement of defence. There were negotiations for settlement of the action; but the Master was of opinion that the judgment was not entered in breach of faith; that it was entered to ensure the case being tried at the approaching sittings. Order made allowing the defendant to deliver a statement of defence in four days, upon his undertaking to go to trial on the 14th November; judgment to stand as security in the meantime; costs of the motion to the plaintiff in any event. H. S. White, for the defendant. J. M. McEvoy, for the plaintiff.

WALLACE v. STEVENSON—MASTER IN CHAMBERS—OCT. 24.

Summary Judgment—Con. Rule 603—Promissory Note—Defence—Account—Estoppel.]—Motion by the plaintiff for summary judgment under Con. Rule 603 in an action upon a promissory note for \$1,477.38, given in settlement of an action for a similar amount. The defence suggested by the defendant's affidavit was that the note was given in reliance on the plaintiff's assurance that the amount represented the true state of accounts between the parties as brokers, but that the defendant had since discovered that this was not true, and that, upon an accounting, it will appear that the defendant is not indebted in any sum. The plaintiff submitted that the defendant could not set up this defence, but must bring a separate action. To this the Master does not accede, as it would be in contravention of sec. 57, sub-sec. 12, of the Judicature Act. Nor does he see that there is any estoppel as between the parties; and he thinks the case is well within the principle of Northern Crown Bank v. Yearsley, 1 O. W. N. 655, and Farmers Bank v. Big Cities Realty and Agency Co., 1 O. W. N. 397. He also suggests that, as the matter is one of account, an order should be made under Con. Rule 607, reserving further directions and costs. Motion dismissed; costs in the cause. Williams (Montgomery & Co.), for the plaintiff. R. C. LeVesconte, for the defendant.