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No. 13

WINCHESTER, MASTER.

MARCH 30TH, 1903.

CHAMBERS.

CANADIAN BANK OF COMMERCE v. TENNANT.

Writ of Summons—Renewal of—Efforts to Ascertain Whereabouts of Defendant—Statute of Limitations—Order for Renewal—Application to Set aside—Discretion.

Motion by defendant to set aside ex parte order for renewal of writ of summons, the renewed writ, and the service thereof on defendant. The action was brought to recover the amounts due upon two promissory notes made by defendant, one for \$800, dated 12th June, 1895, payable four months after date, the other for \$210, dated 23rd August, 1895, payable four months after date, and interest on both sums. The action was begun by writ of summons issued 11th October, 1901. The writ not having been served, the plaintiffs on 10th October, 1902, obtained ex parte from the local Master at Sarnia the order renewing the writ, upon an affidavit made by a clerk in the office of plaintiffs' solicitors, stating "that inquiries have been made to ascertain the whereabouts of the defendant, but that, so far, such inquiries have been without success; that at the time of making the notes sued on defendant resided in the city of Toronto, but that plaintiffs have been unable to locate the said defendant." The writ was renewed, and the renewed writ was served on the defendant at the city of Toronto on 7th March, 1903. Upon this application defendant filed an affidavit setting forth that he had lived in Toronto continuously since the notes were made and giving his house and office addresses, which appeared in the city directory for 1901 and 1902, and that from 11th October, 1901, to 10th October, 1902, he could have been found in Toronto either at his office or house. In answer plaintiffs filed an affidavit of their manager at Sarnia and a clerk formerly employed by their solicitors. These affidavits shewed that after instructions for suit had been given inquiries were made to locate defendant and that the payees of the notes informed the deponents that defendant had left Toronto and was living in Buffalo, but that, although further inquiries were made, they were unable to ascertain his whereabouts until February, 1903.