

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

litigation pending between the plaintiffs and his assignee in respect to certain securities alleged to be held by the plaintiff on account of McKenzie's indebtedness. An affidavit of the plaintiffs' manager in reply was filed denying knowledge of the note being an accommodation one, and stating that it was discounted by the plaintiffs and the proceeds placed to McKenzie's credit.

On appeal from the order of the Master in Chambers,

Held, that it is not the duty of the Judge in Chambers hearing an application under Rule 80, to determine how the facts are. This is not a case in which judgment can be ordered.

Aylesworth, for the appeal.

J. H. Mayne Campbell, contra.

Rose, J.]

[March 16.

CULVERWELL V. BIRNEY.

Examination of defendant—Excluding co-defendant.

An appeal from the order of the Master in Chambers directing the defendant J. L. Birney to attend and be examined at his own expense after an abortive examination, and directing the defendants to pay the costs, was dismissed.

Held, that the special examiner was right in ruling that the defendant Joseph Birney should be excluded during the examination before him in the cause, of the other defendant J. L. Birney.

Fullerton, for the appeal.

Holman, contra.

Rose, J.]

[March 16.

FLETCHER ET AL. V. FIELD.

Costs—Taxation—Special circumstances.

An appeal from the order of the Master in Chambers directing taxation of the plaintiff's bill of costs sued on in this action nearly two years after delivery was allowed.

The bill was for professional services rendered the defendant in an investigation of his conduct as a public official before a commissioner appointed by the Ontario Government, the plaintiffs acting as defendant's solicitors and also assisting as Counsel in the investigation, a senior counsel being also in attendance. The amount of the bill was \$593.42, the chief items being counsel fees. The solicitors who were acting against the defen-

dant, in the investigation, charged their clients \$740. The investigation lasted nine days. The bill was rendered in 1883.

The special circumstance relied upon to enable the defendant to obtain the order for taxation after the lapse of more than a year from the delivery of the bill was, in the words of the defendant, that "there was a distinct understanding between me and the above named plaintiffs that the payment of the said bill of costs was to lie over to await the decision of the Ontario Government, who were by both me and the said plaintiffs, as they stated, expected to pay said bill of costs, I being one of their officers and the charges against me having fallen through."

Held, that the existence of the above understanding, if proved, was not a special circumstance within R. S. O. c. 140, sec. 35, to justify an order for the taxation of the bill after the lapse of a year.

Aylesworth, for the appeal.

Watson, contra.

Rose, J.]

[March 16.

SLATER V. PURVIS.

Changing place of trial.

A motion to change the place of trial in a County Court action from London to Toronto was refused under the following circumstances:

The action was on a promissory note made at Toronto, payable at Toronto. The plaintiff resided in Montreal, and his solicitor in London. The sole defence was that the defendant was discharged from liability by a discharge under the Insolvent Act. The defendant resided in Toronto, and swore that he intended to call two witnesses, the clerk of the County Court of Toronto, and the assignee of the defendant, who also lived in Toronto. The plaintiff filed no affidavit on the motion.

Morson, for the motion.

Aylesworth, contra.

Rose J.]

[March 16.

COCHRANE V. MORRISON.

Trial of issue by county judge—Powers of judge—Rule 373, O. J. A.

Upon a garnishing application made after judgment in this action, which was brought in the H. C. J., C. P. D., the Master in Chambers made an order under Rule 373, O. J. A., direct-