ed a rule *nisi* to set aside verdict for defendant and strike out his defence, or for a new trial, with costs to plaintiff.

R. M. Meredith shewed cause, opposing the rule upon a number of grounds, not now material, and upon the ground that defendant had a sufficient excuse in attending Court, upon advice of his attorney.

Bartram supported his rule. *Senn* v. *Hewitt*, 8 P. R. 70, shows that an examination during sitting of Court is unobjectionable. The statute does not limit the right of one party to examine the other during the sitting. The defendant was guilty of contempt of Court. There must be a new trial, and defendant should pay costs, otherwise plaintiff would be punished for the crafty trick of defendant in not submitting to be examined for fear of benefitting the plaintiff's case.

Elliot, Co. J.—In this case an order was made by my brother judge, on the 27th of November, at the instance of the plaintiff, for the examination of the defendant before Mr. Horton, who appointed the 1st of December following for that purpose. The County Court sittings commenced on that day. At the trial, the counsel for the plaintiff offered no evidence, but asked to have the defence struck out, because the defendant had not appeared before Mr. Horton for examination, pursuant to the order and appointment. This application was made under 41st Vict. c. 8, s. 9, by which it is enacted, "If any person fails, without sufficient excuse, to comply with an order for examination, . . . he shall, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant to have his defence struck out and to be placed in the same position as if he had not defended, and the Court or a Judge may make an order accordingly." I declined to accede to this application, and the plaintiff's counsel having declined to accept a non-suit, I directed the jury to find a verdict for the defendant, which they did.

It is true that by the 156th section of the Common Law Procedure Act it is enacted that either the plaintiff or defendant may at any time after the cause is at issue obtain an order for the examination of the opposite party; but I think these words ought to be interpreted in a reasonable sense; and I think it would be unreasonable that the defendant, having received notice of trial from the plaintiff for the 1st December, at the Court House in London, should also be required by another notice from the plaintiff to appear elsewhere, on the same day, to be examined. The defendant, certainly, could not be at two places at once, and his paramount duty was to be in attendance for his trial. I think much inconvenience would result from the allowance of such a practice. There was ample time in this case for an examination after issue was joined, and before the trial. I don't therefore see any reason for changing the opinion I formed at the trial. But it is not desirable that the plaintiff should be debarred from having his case, tried in consequence of what may have been a mistake. In this view the plaintiff may have a new trial on payment of costs.

REFERENCE FROM THE COMMON PLEAS.

Evans v. Volney.

Reference from Nisi Prius—Notes not properly stamped—Right of referee to allow payment of double duty—Time when application must be made and leave granted.

This case was referred, at the Brockville Spring Assizes of 1879, to H. S. McDonald (County Judge of Leeds and Grenville).

At the hearing in October it appeared from the evidence of a witness or witnesses that the notes sued on (19 in number), or a number of them, had not been properly stamped, or that the stamps had not been properly cancelled.

Reynolds, for the plaintiff, applied to restamp the notes, or to stamp them in such a manner as would make them valid. The referee allowed the application to stand.

On a subsequent day, Mr. Reynolds renewed his application, under 42 Vict. (Dom.) cap. 17, sec. 13. He cited *La Banque Nationale* v. *Sparks*, 2 App. Rep. 112.