

HON. MR. JUSTICE MIDDLETON:—The defendant resides at Galt, and must be sued there unless the case falls within the provision of sec. 77 of 10 Edw. VII. ch. 32, as the whole cause of action did not arise in the limits of the Essex Division Court, the drafts sued on having been accepted at Galt.

The action is brought upon 5 drafts drawn upon and accepted by the defendant, payable at Windsor. Each draft is for \$20, and does not bear interest. Interest after maturity is sought in the claim as damages payable under the statute.

The section in question provides that where the debt or money demand payable exceeds \$100, and is made payable by the contract of the parties at a place therein named, the action may be brought in the Court of the Division of the place of payment.

*Brazill v. Johns*, 24 O. R. 209, has determined that this section does not confer jurisdiction where the principal amount does not exceed \$100, merely because interest may be allowed by way of damages upon the overdue payment. *Re McCallum v. Gracey*, 10 P. R. 514, is not in any way in conflict with this, as there the note itself stipulated for payment of interest, so it was payable by way of debt and not damages.

The prohibition must, therefore, be granted, and I can see no reason why costs should not follow.

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HON. MR. JUSTICE MIDDLETON.      DECEMBER 20TH, 1913.

HAYNES v. VANSICKLE.

5 O. W. N. 553.

*Discovery—Examination of Defendant—Action to Establish Partnership—Refusal to Answer—Motion to Commit—Postponement of Discovery until Right to Participate in an Undertaking Established.*

*Beddell v. Ryckman*, 5 O. L. R. 670, followed.

Appeal by plaintiff from an order of HOLMESTED, Senior Registrar-in-Chambers, dismissing an application to strike out the defence of the defendant Van Sickle for refusal to answer certain questions upon examination for discovery.

J. M. Langstaff, for plaintiff.

E. F. Lazier, for defendant Van Sickle.