

c. 182, for the examination of defendant before D., a commissioner. Defendant's solicitor appeared before D. and objected to his proceeding with the examination on the ground that as solicitor for another creditor of defendant he had such an interest in the result of the examination as to disqualify him from acting. Subsequently a writ of prohibition was issued from the Supreme Court to restrain D. from acting or proceeding with the examination. On appeal from the order allowing the writ,

*Held*, affirming the order of the judge in this particular that D. was disqualified. But that as a commissioner acting under the provisions of the Collections Act does not constitute a distinct court the writ was improperly allowed, and that for this reason the appeal must prevail, but without costs.

*W. W. Fulton*, for appellant. *T. R. Robertson*, for respondent.

Full Court.]

BOORSTEIN *v.* MOFFATT.

[April 11.]

*Statute of frauds—Promise to be answerable for the debt of another—Form of action—Pleading.*

In an action against defendants, M. and G., for work done and materials provided by plaintiff for defendants, at defendants' request, the evidence shewed that the defendant, G., entered into a contract with the defendant, M., for the building of a house and that the defendant, M., employed plaintiff to do the work of painting and glazing. M. failed to make payments to plaintiff as agreed and plaintiff thereupon went to G. who told him to go ahead and he would see him paid.

*Held*, 1. As there was no evidence to shew that the defendant, M., was to be discharged, the promise made by the defendant, G., was within the 4th section of the Statute of Frauds, and, not having been made in writing, could not be enforced.

2. In view of the form of action there was no necessity for pleading the statute, and that M. having offered no defence, judgment was rightly given in favour of defendant, G.

*J. A. Chisholm*, for appellant.

Full Court.]

LEFURGEY *v.* HARRINGTON.

[April 11.]

*Statute of Limitations—Amount credited by sheriff on execution—Held not a payment by or on behalf of debtor—Ex parte order for execution—Held to confer no new right—Necessity for notice.*

At a sale of lands under execution the lands sold were bid in by the judgment creditor and the amount of the bid credited on the execution by the sheriff on account of the judgment debt.

*Held*, 1. This was not a payment by or on behalf of the debtor to take the case out of the statute of limitations.