an account, is one that was peculiarly within the exclusive jurisdiction of the Court of Chancery prior to the Administration of Justice Act of 1873, and should, therefore, be tried without a jury, unless otherwise ordered, by virtue of s. 77 of the Judicature Act, R.S.O., c. 44; and a jury notice given in such an action will be struck out.

Re Lewis, Jackson v. *Scott*, 11 P.R. 107, followed.

Under Rule 654 the defendant has a right to give notice of trial for the next sittings of the court, and, if such notice is regular, the plaintiff cannot interfere with such right by giving notice for a more distant sittings.

It is the duty of a defendant setting a case down for trial to give notice of trial to all the other parties; and if some of them have not appeared, and it is necessary to give them notice of motion for judgment, such notice should be for the same time and place as the notice of trial.

Masten for the plaintiff.

Frank Denton for the defendant Robinson.

STREET, J.] [March 31.

MACK *v.* DOBIE.

Discovery—Examination of party—Rule 487—Examination to credit—Identity of plaintiff.

The examination of a party for discovery in the cause under Rule 487 must be confined to matters which are relevant to the questions raised by the pleadings; but a fair amount of latitude is to be allowed. Questions which go only to credit are not admissible.

In an action for a partnership account, where the defendant denied the partnership and set up that the plaintiff had been his servant under the same name as that in which he brought the action during the period of the alleged partnership,

Held, that it was not material to the issue that the plaintiff bore another name at a previous time, and the defendant could not examine him as to the details of his past life, long prior to the alleged partnership.

G. W. Marsh for the plaintiff.

M. G. Cameron for the defendant.

ERDMAN *v.* TOWN OF WALKERTON.

Evidence—Order for use of in future action—Bill to perpetuate testimony—Parties.

The court has no power in a pending action to make an order authorizing the use of evidence taken therein in a future action.

Bills to perpetuate testimony were maintainable, not by the parties to a pending action, but by persons possessing rights which could not be enforced at the time.

W. H. Blake for the plaintiff.

Douglas Armour for the defendants.

MEREDITH, J.] [April 1.

HOGABOOM *v.* LUNT.

HOGABOOM *v.* MCDONALD.

Notice of trial—Rule 654—"Next sitting of the court"—Assizes—Chancery sittings.

The plaintiff gave notice of trial for the Toronto Assizes, which were earlier than the Chancery Sittings, and the defendants gave notice of trial for the Chancery Sittings. The actions could properly have been tried at either. In consequence of the state of the Assize docket, it seemed probable that the actions would really be sooner tried if set down for the Chancery Sittings.

Held, that the Assizes was, and the Chancery Sittings was not, "the next sitting of the court," and the defendants were, therefore, not within their right under Rule 654 in giving notice of trial for the latter.

W. R. Smyth for the plaintiff.

W. H. Blake for the defendants.

ROBINS *v.* THE EMPIRE PRINTING AND PUBLISHING CO.

Evidence — Foreign commission — Application for—Material on—Good faith—Necessity for evidence—Expense—Delay—Admissions.

In an action for libel published in the defendants' newspaper, the plaintiff applied for the issue of a commission to take his own evidence and that of other witnesses in England, where he and they lived.

The plaintiff's affidavit stated only that the witnesses were material and necessary for him