

The Mining Commissioner rightly refused to go into the merits. Nor can we say that the Recorder was wrong in extending the time for doing the work. And it is plain that, the claims of the respondents being recorded, the Recorder was right in refusing to record those of the appellants.

All the appeals should be dismissed with costs.

We do not interfere with the proceedings said to have been taken under sec. 66 of the Act.

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AIKINS v. MCGUIRE—MASTER IN CHAMBERS—OCT. 14.

*Discovery—Examination of Persons for whose Immediate Benefit Action Prosecuted—Con. Rule 440—Affidavit—Insufficiency.*—In this action for specific performance, the defendant moved for an order, under Con. Rule 440, for the examination for discovery of Poucher and Percy, two persons alleged in the statement of defence to be partners of the plaintiff in the transaction in question. The only evidence in support of the motion was an affidavit of a member of the firm of the defendant's solicitors, which said: "F. B. Poucher and John Percy have admitted to me that they are interested in the lands in question in this action." The allegations as to this interest in the statement of defence were denied in the reply; and, therefore, the Master said, did not afford the defendant any assistance at this stage. It was admitted that the agreement on its face was with the plaintiff alone. And, even if the affidavit was to be given full effect to, it was not sufficient, for two reasons. It might be perfectly true that Percy and Poucher were interested in the lands "in question," without it being possible to hold that they were persons "for whose immediate benefit" the action was being prosecuted. Further, any such admissions by Percy and Poucher were not in any way binding on the plaintiff—nor, in face of his denial in the reply, could they be used against him. Reference to *Stow v. Currie*, 14 O.W.R. 61, 223, and cases cited; *Minkler v. McMillan*, 10 P.R. 506; *Moffat v. Leonard*, 8 O.L.R. at p. 520. Motion dismissed with costs to the plaintiff in the cause. If hereafter the defendant thinks it well to renew this motion, and that he can then support it by sufficient evidence, he may do so. J. T. White, for the defendant. A. F. McMichael, for the plaintiff.