

Practice.

MR. WINCHESTER.]

[Sept. 6.

GALT, C.J.]

[Sept. 15.

HOGABOOM v. COX.

*Discovery—Examination of party in vacation
—Production of documents in the hands of a
third person.*

A party to an action is not bound to attend for examination for discovery during vacation.

Where a party to an action referred in his affidavit on production to certain documents as being in the hands of a third person, who refused to give them up until paid certain charges which were disputed,

Held, by the Master in Chambers, that the opposite party must content himself with inspecting the documents and taking copies, unless he should agree to indemnify his opponent against the cost of obtaining the documents.

W. R. Riddell for the plaintiff.

A. Hoskin, Q.C., for the defendants.

THE MASTER IN CHAMBERS.]

[Oct. 12.

GALT, C.J.]

[Nov. 4.

HARDING v. KNUST.

*Taxation of costs—Setting aside certificate—
Affidavit of disbursements—Review of tax-
ation.*

This was an application by the defendant to set aside the certificate of one of the taxing officers at Osgoode Hall, and to disallow certain items in the plaintiff's bill of costs, on the ground of alleged incorrectness of the affidavit of disbursements. It was contended by the defendant that certain witness and counsel fees, alleged to have been paid prior to the making of the affidavit, were not, in fact, actually paid at the date of taxation, and that these fees were allowed by the taxing officer on the strength of the affidavit. The motion before the Master was resisted on the ground that he has no jurisdiction to set aside or modify a taxing officer's certificate, and, on the merits, it was contended that sufficient payment had been made in law to enable the plaintiff to make the affidavit, and that the affidavit was substantially true and correct.

The following cases were referred to: *Cuerrier v. White*, 12 P.R. 571; *Langtry v. Dumoulin*, 10 P.R. 444; *Re Ponton*, 15 Gr. 355; *Carr v. Moffatt*, 9 C.L. 52; *Grahame v. Anderson*, 2 Chy. Cham. 303; *Graham v. Godson*, *ib.*, 472; *Bentley v. Jack*, *ib.*, 473; *Hornick v. Township of Romney*, 11 C.L.T. 329; *Waterous v. Farran*, 6 P.R. 31; and the Judicature Act and Rules.

The learned Master held that he has no jurisdiction to set aside the certificate of the taxing officer, or review the taxation of a bill of costs after the taxing officer has granted his certificate, and dismissed the defendant's motion without costs.

On appeal to GALT, C.J., the order of the Master in Chambers was affirmed, and the appeal dismissed with costs to the plaintiff in the cause.

E. F. B. Johnston, Q.C., and *T. W. Horn* for the plaintiff.

W. R. Smyth for the defendant.

MUIR, Local J.]

[Oct. 25.

STEVENSON ET AL. v. CRAYSON.

*Jury notice—Application to strike out—Remarks
as to framing pleadings—Expediting the trial.*

This was a motion by the plaintiffs to strike out a jury notice filed by the defendant, for the alleged reason that the case was one over which the Court of Chancery formerly had exclusive jurisdiction, and as provided by s. 77 of the Judicature Act, R.S.O., c. 44, the action should be tried without a jury. The plaintiffs claimed a right of way over lands adjoining their lands, and alleged that in June last the defendant wrongfully caused a fence to be erected enclosing the right of way in dispute, and thereby the plaintiffs and their tenants were prevented from obtaining ingress, egress, etc., and they asked (1) that it might be declared that there exists as appurtenant to their land a right of way through the rear portion of lot 4, etc., the land adjoining; (2) that the defendant might be ordered to remove all obstructions, etc.

MUIR, Local Judge, H.C.J.: I think it may be correctly affirmed that a party to an action is not to have it in his power to change the forum and mode of trial simply by adopting one form of pleading instead of another; at the