The judge contended that it would be better not to take the books out of the actual possession of the company, as there was a plausible ground for the claim that the receiver could take possession of the books and papers at any time, and because the parties to the suit in which the receiver had been appointed, were not before the Court on the present application.

Order varied on appeal, without costs.

Wilson, for plaintiff.

Phippen, for defendant.

DUBUC, J.] March 5.

WHITLA *v.* AGNEW.

Practice—Examination of judgment debtor—Production of books—Notice to produce.

The defendant in this case contended that he could not be compelled to produce his books and documents on his examination as a judgment debtor, as he had not been served with *subpœna duces tecum*, and relied upon the language of Rule 736 of the Queen's Bench Act of 1895 (Ont. Rule 929), which provides that any person liable to be examined as a judgment debtor "may be compelled to attend and testify, and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness."

Held, that the word "witness" in this Rule is not necessarily limited to a witness at a trial, but that the practice on such an examination is analogous to, and may properly be assimilated with, the practice upon an examination for discovery under Rules 374 and 384, and that it was quite sufficient to serve a notice to produce such books upon defendant, which had been done.

Appeal from order of Referee, dismissed with costs.

Elliott, for plaintiff

Vivian, for defendant.

Full Court] [March 7.

GILES *v.* MCEWAN.

Statute of Frauds—Hiring and service—Quantum meruit—Joint creditors.

This was an appeal from the decision of TAYLOR, C.J. (noted ante vol. 31, p. 678). In addition to the facts there mentioned it might be stated that the plaintiffs were dismissed from the service of the defendant two days before they would have completed their year of service, and no justification for the dismissal was proved.

Held, that the plaintiffs could recover for the value of their services, and that the verbal agreement might be given in evidence for the purpose of showing the amount that defendant had agreed to pay, and that the hiring was a joint one, although no action could be brought directly upon it. *Maddison* v. *Alderson*, 8 App. Cas., at p. 475.

Held, also, that the plaintiffs could sue jointly, and only jointly, for the value of their services.

Pulbrook v. *Lawes*, 1 Q.B.D. 284; *Mayer* v. *Payne*, 3 Bing. 285; *Knowlman* v. *Bluett*, L.R. 9 Ex. 307, followed.