

judgment relied on, that a certified copy of the certificate should have been produced, and that the appeal should be allowed with costs, without prejudice to another application or any other proceedings.

The Court expressed no opinion upon the question of the defendant's right to claim exemption for the land.

Culver, Q.C., for plaintiffs. *Metcalf and Sharpe*, for defendant.

Full Court.]

INCH v. SIMON.

Dec. 23, 1897.

Bills of Sale Act—Chattel mortgage—Affidavit of execution sworn before the mortgagee.

Held, that under the Bills of Sale Act, R.S.M., c. 10, it is not a fatal objection to a chattel mortgage that the affidavit of the witness as to its execution by the mortgagor has been taken before the mortgagee himself, he being a commissioner for taking affidavits in the Province, as there is nothing in the Act to prevent such a course being adopted.

Pitblado, for plaintiff. *Bradshaw*, for defendant.

Province of British Columbia.

SUPREME COURT.

Bole, Loc. J.]

MEISTER v. PHILP.

[Dec. 10, 1897.]

Commission to take evidence out of the jurisdiction.

Application was made in this case on behalf of the plaintiff for a commission to examine him at Seattle, and the defendant resisted the application on the ground, *inter alia*, that he desired to have the plaintiff cross-examined before the court.

Held, following *Castelli v. Groome*, 21 L.J. Q.B. 309, that it lies upon the person applying to the court to show that it would be conducive to the due administration of justice that the commission should issue. It is not enough to show that the plaintiff or defendant lives out of the jurisdiction of the court. It would lead to most vexatious consequences, if constant recourse could be had to this power, and it would be so in all cases where parties wish to avoid the process of examination in court. *Berdman v. Greenwood*, 20 C.D. 764; *Ross v. Woodford* (1894), 1 Chy. 42; *New v. Burns*, 64 L.J. Q.B. 104, *Ehrmann v. Ehrmann*, 65 L.J. Chy. 747.

Application refused.