

Appeal dismissed with costs, and judgment to be entered in favour of the plaintiffs in accordance with the report, together with the costs of the action and reference and of this motion. Britton Osler, for the defendants. Gideon Grant, for the plaintiffs.

HOWELL V. IRONSIDE—DIVISIONAL COURT—JUNE 17.

Sale of Livery Business—False Representations—Subsequent Dealing with Property.]—Appeal by the defendant from the judgment of the County Court of Wentworth of April 5, 1911, in an action on a promissory note given in part payment for a livery business. The defendant counterclaimed for damages, alleging false and fraudulent representations by the plaintiff on the sale of the business. At the trial, after deducting for damages and insurance, judgment was given for the plaintiff for \$170.61, each party to pay his own costs. The appeal was heard by RIDDELL, LATCHFORD, and SUTHERLAND, JJ., and the judgment of the Court was delivered by RIDDELL, J., who said that upon the findings of fact at the trial, which he thought could not be set aside, the whole case was one of amount of damages. The learned trial Judge had correctly apprehended the facts and the law, and the appeal should be dismissed with costs. J. W. Lawrason, for the defendant. W. E. S. Knowles, for the plaintiff.

HAWES, GIBSON & CO. v. HAWES—MASTER IN CHAMBERS—
JUNE 19.

Examination for Discovery—“Party Adverse in Interest”—Con. Rule 439—Practice under Corresponding English Rule.]—Motion by the plaintiffs for an order setting aside application for examination for discovery by the defendant of James Hawes, a member of the firm of Hawes, Gibson & Co., in an action brought by the receiver of the partnership of Hawes, Gibson & Co. which is being wound up under order of the Court. James Hawes was admittedly a member of the firm, and it was also admitted that he is not in favour of the action and has joined in an agreement made since the order for winding up the partnership, which if enforceable would be destructive of the present action wholly or in part. On these grounds it was contended that James Hawes is not examinable under Con. Rule 439, because he is not adverse