

the plaintiff himself, and not then even if he had not become unconscious. . . .

[Reference to Campbell v. Canadian Pacific R. W. Co., 1 Can. Ry. Cas. 258.]

The action fails, and must be dismissed, but, under all the circumstances, I may, I think, properly exercise my discretion as to costs by dismissing it without costs.

SUTHERLAND, J., IN CHAMBERS.

MAY 4TH, 1910.

MORRISON v. WRIGHT.

Summary Judgment—Con. Rule 603—Affidavit Filed in Answer—Refusal of Local Judge to Enlarge Motion for Cross-examination—Con. Rule 490—Discretion—Appeal.

The plaintiff moved for summary judgment under Con. Rule 603 before the Local Judge at Barrie, after appearance by the defendant to a specially indorsed writ.

The action was on a promissory note alleged to have been made by the defendant in favour of one Duncan S. Currie, who indorsed it to the plaintiff.

The plaintiff filed his own affidavit in the usual form on such motions, alleging therein, as well, that he was "the holder in due course for value of the promissory note sued on in this action," and he filed, in addition, an affidavit by Currie, in which the latter stated that he "was personally present on or about the 14th day of January, 1907, at the town of Collingwood, Ontario, . . . when the defendant Mary Wright signed the said note."

The defendant, in answer to the motion, filed her affidavit, in which she stated that she "did not make or sign the promissory note sued on herein or any note or about the 14th January, 1907, in favour of Duncan S. Currie," and that she had "a good defence on the merits to this action, and the appearance . . . was not entered for the purpose of delay."

On the return of the motion, and with this material before the Local Judge, an application was made to him on behalf of the plaintiff for an enlargement of the motion to enable him to cross-examine the defendant upon her affidavit.

The Local Judge refused the application for the enlargement, and dismissed the motion for immediate judgment, as appeared by his order to that effect dated the 29th March, 1910.