

plicable to the subject, the original practice of the Court remains, and the application was properly made to a single judge.

Held, that upon the discovery of material evidence publication may be opened even after judgment affirmed by the two Courts above.

The learned judge considered that what was proposed to be introduced as new evidence was not material, and dismissed the petition with costs.

S. H. Blake, Q.C., C. Moss, Q.C., and Walter Barwick, for the petitioners.

McCarthy, Q.C., Alfred Hoskin, Q.C., and Arnoldi, for the respondents.

Mr. Dalton, Q.C.] [Sept. 15.]

TORRANCE V. LIVINGSTONE.

Counter-claim—Third parties.

An action by the plaintiffs as endorsees of a bill of exchange accepted by the defendant.

The defendant sets up that the bill was part of the price of goods bought by him from H. and G., the drawers, and the defendant files a counter-claim against the plaintiff, against H. and G. as defendants by counter-claim, claiming that the bill was transferred to the plaintiffs after maturity, with full notice and knowledge of the facts between the defendant and H. and G. and claiming from H. and G. \$10,000 damages for breach of contract in respect of the said goods, and from the plaintiff and H. and G. the delivery up and cancellation of the bill sued on and other bills in the same transaction.

Upon the application of H. and G. the MASTER IN CHAMBERS struck out the counter-claim as against H. and G., and also struck out the names of H. and G. as defendants by counter-claim, following *Canadian Securities Co. v. Prentice*, 9 P. R. 329.

Worrell, for the defendants by counter-claim.
Aylesworth, for the defendant.

Mr. Dalton, Q.C.] [Sept. 21.]

VICTORIA MUTUAL V. FREEL.

Principal and surety—Costs.

Judgment for a debt was obtained by the plaintiffs against the defendants, who stood to each other in the relation of principal and surety. The surety paid the plaintiffs the amount of their debt and costs, took an assignment of the judg-

ments, and then proceeded to enforce against his principal.

Motion by the principal to reduce the amount endorsed to be levied on the writs of *fi. fa.* issued against him by the surety.

Held, that the costs as well as the debt were recoverable by the surety as against his principal.

Aylesworth, for the defendant Freel, the principal.

Clement, for the defendant Foley, the surety.

Wilson, C.J.]

[September 28.]

DONOVAN V. BOULTBEE.

Notice of trial where trial postponed by order—Remanet.

Motion by the defendant to strike out this cause from the list of cases for trial at the Toronto Autumn Assizes, 1883. At the preceding Summer Assizes the cause was upon the list, and the trial was postponed by order of the judge at the trial, upon the defendant's application, with the condition that the defendant should pay the costs on the final result in any event of the cause. The Clerk of Assize placed the case upon the list for the next (Autumn) Assizes without any direction from the plaintiff or defendant. No notice of trial was served.

The MASTER held that in the case of a *remanet* no notice of trial is necessary under Rules of Court, 1876. Under the circumstances this case was not a *remanet* and a notice of trial was necessary. Order made without costs.

On appeal to WILSON, C.J., *held*, that a cause postponed by the order of the judge at the Assizes, upon the defendant's application, is a *remanet*, and no notice of trial for the next Assizes is necessary.

H. F. Scott, Q.C., for the defendant.

J. A. Donovan, plaintiff, in person.

Wilson, C.J.]

[Sept. 28.]

RAMSAY V. MIDLAND RY. CO.

Examination for discovery—Office of corporation—Station agent.

A station agent of a railway company is an officer examinable under R. S. O. c. 50, sec. 156. An appeal from the order of Mr. Dalton directing the agent of the defendants, at the Orillia station, to be examined as an officer of the corporation under sec. 157 of the C. L. P. Act.