

This is plainly a case which would be tried without a jury—a case of investigation of accounts.

The order must go. Costs in the cause.

CARTWRIGHT, MASTER.

DECEMBER 17TH, 1906.

CHAMBERS.

HAINES v. YEARSLEY.

*Summary Judgment—Rule 603—Action on Promissory Note
—Defence—Note given on Conditional Undertaking.*

Motion by plaintiff for summary judgment under Rule 603 in an action on a promissory note given by defendant to plaintiff.

R. U. McPherson, for plaintiff.

C. P. Smith, for defendant.

THE MASTER:—Defendant's affidavit sets out the transaction which led to the giving of the note. He then says (paragraph 6) that plaintiff "suggested that I should give my promissory note for \$1,000, and that he would hold same and would not negotiate it, and that he would not call upon me for payment of same unless and until I collected the amount thereof from (one) Henderson." The following paragraph alleges that "in pursuance of the request, for the purposes and subject to the conditions in the paragraph preceding, I gave to plaintiff the promissory note in question."

There is no impeachment of this affidavit; plaintiff's contention being that no such defence can be set up according to the well-established principle as to written contracts.

The defendant relies on sec. 21, sub-sec. (2), clause (b), of the Bills of Exchange Act, and sec. 88, and cites Commercial Bank of Windsor v. Morrison, 32 S. C. R. 98.

After considering the matter, I think that defendant should be allowed to submit his contention to the Court.