

Paragraph 2 of the defendant's affidavit read on the return of the summons was as follows: "I did not intend leaving the Province of British Columbia permanently, but I have changed my residence from the City of Vancouver to the City of Victoria, and on my leaving Vancouver on the 3rd instant I intended to return to Vancouver, and then procured and have now in my possession a return ticket from Victoria to Vancouver.

Held, 1. That the statements in the affidavit as to the debt and intention to leave the province were sufficient.

2. A defendant arrested under a writ of ca. re. admits by implication his intention to leave the province by denying his intention to leave it permanently.

3. By the giving of bail, a defendant so arrested waives his right to object to irregularities in the writ.

Harris, for summons. *Marshall*, contra.

North-West Territories.

SUPREME COURT.

Rouleau, J.]

WRIGHT v. SHATTUCK.

[Jan. 27.

Practice—Commission to take evidence of witnesses abroad—Examination of party thereunder.

Upon the application of the defendant, an order was made for the issue of a commission to take the evidence of witnesses in the Province of Ontario. The plaintiff had consented to the order upon the condition that he should also be allowed to call witnesses before the Commissioner on his own behalf. The order accordingly provided that a commission issue for the examination of witnesses on behalf of both the plaintiff and the defendant. It contained the names of none of the witnesses intended to be examined. Upon taking the evidence under the commission, the plaintiff's counsel tendered the evidence of the plaintiff himself, having given the two days' notice of his intention to do so provided for in the order, and his evidence was taken subject to objection. The commission was opened at the trial of the action and the defendant objected to the reading of the plaintiff's evidence on the ground that the commission and the order under which it was issued were not wide enough to include the taking of the plaintiff's evidence.

Held, that the evidence given by the plaintiff under the commission must be suppressed, as the Commissioner had no authority to examine him; also, that the application to suppress could either be made in Chambers by summons or to the Court directly, upon the trial of the action.

R. B. Bennet, for the plaintiff. *McCarthy*, Q.C., for the defendant.