FERGUSON, J.] March 11.]

IMPERIAL LOAN CO. *v.* BABY.

*Judge in Chambers—Motion to extend time for moving Divisional Court.*

A motion to extend the time for moving before a Divisional Court against the judgment of the trial judge should not be made to a judge in Chambers, but to the Divisional Court itself.

*Hoyles*, for defendant.

*E. B. Brown*, for plaintiffs.

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MR. DALTON.] [March 11.

TRADERS' BANK *v.* KEAN.

*Evidence—Examination—Motion to be made—Rule 578.*

Immediately after appearance in the action a subpœna was issued and an appointment given for the examination of the defendant, and also of one M. D. Kean (not a party), before a special examiner at Barrie, to give evidence on behalf of the plaintiffs on a motion to be made by them under the rules respecting replevin for an order for replevying a certain guarantee, the subject of this action.

The subpœna and appointment were moved against on the ground that there was no motion, petition, or other proceeding pending in the action, and the provisions of Rule 578 were therefore not applicable.

*Held*, that there must be a pending motion on which the examination is to be taken; and such was not the case here, as the subpœna spoke of a "motion to be made."

*McMurray* v. *Grand Trunk Ry. Co.*, 3 Ch. Chamb. R. 130; *Stovel* v. *Coles*, *ib.* 362, referred to.

*Held*, also, that the examination of the defendant at this stage was improper for another reason; the examination was manifestly on the merits of the action, and it was too early in the action for the plaintiffs to obtain discovery except by a special order under Rule 566.

*Lefroy*, for plaintiffs.

*H. W. Eddis*, for defendants.

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ROSE, J.] [March 18.

DELANEY *v.* MACLENNAN.

*Security for costs—Nominal plaintiff.*

The defendant in an action of ejectment, in which the plaintiff claimed title as owner subject to a mortgage to a bank, moved for security for costs on the ground that the plaintiff was not able to pay costs, and that the action was not really brought by him, but by the bank.

It was shown that the plaintiff was financially worthless; that his interest in the land was so doubtful that he did not feel sufficient interest in the question to litigate it; that the bank instructed their own solicitor to look into the title, took the advice of counsel, and were advised to have an action brought in the name of the mortgagor, who was then for the first time consulted about bringing the action; that the ordinary solicitor of the bank was retained to bring the action, and that he admitted he knew the plaintiff was insolvent. It was fairly deducible from the evidence that the bank had really in fact retained the solicitor, and that the solicitor would look to the bank for his costs.

*Held*, that under these circumstances the action must be regarded as that of the bank, and not of the plaintiff, who was therefore required to give security for costs.

*Parker* v. *Great Western Ry. Co.*, 9 C.B. 766, and *Andrews* v. *Marris*, 7 Dowl. 712, followed.

*W. H. P. Clement*, for plaintiff.

*J. B. Clarke*, for defendant.

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## Appointments to Office.

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REGISTRAR OF DEEDS.

*Halton.*

D. Campbell, of Nelson, to be Registrar of Deeds for the County of Halton, *vice* F. Barclay, deceased.

CORONER.

*York.*

Geo. W. Clendenan, M.D., of West Toronto Junction, to be an Associate Coroner for the County of York.

DIVISION COURT CLERKS.

*Hastings.*

A. W. Coe, of Madoc, to be Clerk of the Sixth Division Court of the County of Hastings, *vice* Dr. Loomis, deceased.