

Rule 439; nor is he a person for whose immediate benefit an action is prosecuted or defended under Con Rule 440, being in the action merely for the protection of the infant's interests and with the object of guaranteeing the payment of the costs by him; and so he is not examinable for discovery.

The distinction between our rules and English Order XXXI., Rule 29, pointed out.

The order was made by a local judge ordering such examination was therefore set aside.

Counsell, for plaintiff. C. W. Bell, for defendant.

Mulock, C.J. Ex.D., Teetzel, J., Anglin, J.]

[Jan. 25.]

BAXTER v. GORDON IRONSIDES CO.

Malicious prosecution—Termination of proceedings favourable to plaintiff—Maintenance of action.

In order to maintain an action for malicious prosecution based upon proceedings in a criminal matter the plaintiff must shew that the termination of the proceedings taken against him was such as furnishes prima facie evidence that the action (proceedings) was without foundation. The plaintiff was charged with disposing of his property with intent to defraud his creditors, arrested and taken before a police magistrate where as the result of a suggestion he gave up \$300 found on his person and signed notes for the balance of the defendants' claim and the prosecution was withdrawn and the police magistrate endorsed on the information "settled out of Court" and plaintiff was allowed to go.

Held, that he could not maintain an action for malicious prosecution.

Wilkinson v. Howell (1830), *Moody & Malkin*, 495, p. 496, followed. English and American cases reviewed. Judgment of *Boyd, C.*, reversed.

H. L. Drayton, for defendants' appeal. *Middleton*, contra.