

*Held*, Meredith, J., dissenting, that the reference being before trial and the cause being referred for the purpose of trial, the referee had power to direct one who was a party or one for whose immediate benefit the action was prosecuted or defended to be examined for discovery.

The provision that a referee in such a case shall have the same power as a judge with respect to discovery and production of documents is, by reasonable implication, to be treated as embodied in his power to examine the parties and investigate the matters in difference referred to him.

The action was one brought against an assignee for the benefit of creditors to establish the right of plaintiff to rank upon the estate, which was as a fact insolvent.

*Held*, notwithstanding, Meredith, J., dissenting, that the assignor was a person for whose benefit the action was defended within the meaning of Rules 440 and 466, and was to be regarded as a party for the purpose of examination and for the purpose of discovery.

*Masten*, for defendant. *Douglas*, K.C., for plaintiff.

Boyd, C.]

[Jan. 14.]

CANADIAN RADIATOR CO. v. CUTHBERTSON.

*Writ of summons—Service out of jurisdiction—Cause of action, where arising—Contract—Conditional appearance.*

This was an appeal for an order of the Master in Chambers refusing to set aside an order for the issue of a writ of summons for service of the jurisdiction under Rule 1246. The plaintiff applied for the order in question on affidavits setting forth that the contract on which the action was brought and which was made in Manitoba was to be performed by payment in Ontario. The defendants by affidavit denied this and said that the contract was made and to be performed in Manitoba.

*Held*, that this issue was not to be determined in a summary way on affidavits, but the defendant's proper course was to enter a conditional appearance under Con. Rule 173, and then raise the question of the want of jurisdiction in his pleading.

*Holman*, K.C., for defendants. *C. A. Moss*, for plaintiff.

Meredith, C.J.C.P., Teetzel, J.]

[Feb. 2.]

IN RE WENTWORTH ELECTION (DOMINION).

*Parliament—Election of members—Ballots numbered by deputy returning officer.*

The prohibition contained in sub-s. 2 of s. 80 of the Dominion Elections Act, 1900, against the counting of ballot papers "upon