

Robson, J.]

[April 17.]

TORONTO CARPET MFG. CO. v. IDEAL HOUSE FURNISHERS.

*Practice—Commission to take evidence of plaintiffs' chief witness abroad—Application for—Material for, sufficiency of.*

A commission to take the evidence in Toronto of the plaintiffs' general manager for use at the trial should be refused when it is shewn that he would be the chief witness for the plaintiffs to meet defences denying the sale of the goods sued for and setting up that the plaintiffs had agreed to accept shares in the defendant company in satisfaction of the debt guaranteed by the individual defendants and that shares had been accordingly allotted to and accepted by the plaintiffs, and when the only material in support of the application was an affidavit of the witness saying that he was a material witness to prove the account and to disprove the various defences, and that it would entail great loss and expense for him to attend a trial at Winnipeg, as his duties as general manager of the plaintiff company required his continued presence in Toronto. *Canadian Railway Co. v. Kelly*, 17 M.L. 645; *Lawson v. Vacuum Brake Co.*, 27 Ch.D. 137, and *Ross v. Woodford* (1894), 1 Ch., at p. 42, followed.

*Hannesson*, for plaintiffs. *Armstrong, Taylor and Phillipps*, for various defendants.

Robson, J.]

SCHWARTZ v. BIELSCHOWSKY.

[April 17.]

*Joint debtors—Release of one by giving time to the other—*

*Release by accepting separate obligation of one joint debtor.*

1. Where one of two joint debtors furnished the other with money to pay his half of the debt, his position as to the balance does not become merely that of surety for the other, unless the creditor knew of the facts. *Rouse v. Bradford Banking Co.* (1894), 2 Ch. 32, (1894), A.C. 567, followed.

2. When the creditor expressly declares his intention to hold both the joint debtors, he may accept the separate obligation of one for an unpaid balance of the debt and give him time for payment, renewing the obligation several times, without thereby releasing the other from his liability for such balance. *Swire v. Redman*, 1 Q.B.D. 536; *Brease v. Griffith*, 24 O.R. 492, *Cluff v. Norris*, 19 O.L.R. 457, and *Bedford v. Deakin et al.*, 2 B. & Ald. 210, followed.

*Hoskin, K.C.*, and *Montague*, for plaintiff. *Andrews, K.C.*, and *F. M. Burbidge*, for McDermott. *Hannesson*, for Bielschowsky.