

GALT, C.J.]

MARSH v. WEBB.

[Nov. 7.]

Security for costs—Appeal to Supreme Court of Canada—Delivery out of bond.

Where the plaintiff, being out of the jurisdiction, has filed a bond as security for the defendant's costs of the action, and has succeeded in the court of first instance and in the Court of Appeal, he is entitled, notwithstanding that the defendant is appealing to the Supreme Court of Canada, to have his bond delivered out to him.

mill v. Lilley, 3 Times L.R. 349; 56 L.T. N.S. 620, followed.

W. J. Green for the plaintiff.

F. L. Webb for the defendant.

THE MASTER IN CHAMBERS.]

[Nov. 8.]

MCLENNAN v. FOURNIER.

Appearance—Default of—Noting pleadings closed—Rule 393.

Where defendants do not appear, an order may be made, by analogy to Rule 393, directing the proper officer to note the pleadings closed, but without such an order the officer has no power to do so.

Morse v. Lambe (ante p. 468) explained.

S. H. Blake, Q.C., for the plaintiff.

J. A. Macintosh for the defendants.

BOYD, C.]

CLARKE v. COOPER.

[Nov. 16.]

Amendment—Mortgage action—Omission to include part of mortgaged lands—Amending writ of summons after judgment—Rules 444, 780.

Under the liberal powers of amendment now given by Rules 444 and 780, the writ of summons may be amended after judgment.

And where the plaintiff, by mistake, omitted from the description of lands in the writ of summons in a mortgage action a parcel included in the mortgage, an order was made, after judgment and final order of foreclosure, vacating the final order, directing an amendment of the writ and all proceedings, and allowing a new day for redemption by a subsequent incumbrancer who did not consent to the order, and in default the usual order to foreclose.

Masten for the plaintiff.

E. T. Symens for the defendant, the Quebec Bank.

ROSE, J.]

[Nov. 22.]

BERLIN PIANO CO. v. TRUAISCH.

Venue—Change of—Preponderance of convenience—Cause of action—Personal convenience of witnesses.

Upon a motion to change the venue, it is necessary to show an overwhelming preponderance of convenience in favour of the change.

Peer v. North-West Transportation Co., 14 P.R. 381, followed.

Where the defendant moved to change the place of trial from Berlin to Belleville, showing that the saving of expense to him, if the case were tried at Belleville, would be about \$40, and that there were two or three more witnesses at Belleville than at Berlin, and the cause of action arose at Belleville, the motion was refused.

Held, that the question whether it would be personally more inconvenient for the plaintiffs' witnesses to go to Belleville, or for the defendants' witnesses to go to Berlin, was not one that could be considered.

W. H. P. Clement for the plaintiffs.

W. H. Blake for the defendant.

BOYD, C.]

[Nov. 23.]

FOURNIER v. HOGARTH.

Security for costs—Plaintiff giving false address—Temporary residence within jurisdiction—Incarceration under criminal sentence.

Where the plaintiff, who for two years previous to the commencement of the action had been a resident in the Province of Quebec, indorsed a false address, within Ontario, upon the writ of summons, for the purpose of misleading and escaping giving security for costs, and was at the time an application was made therefor a prisoner in Ontario under a criminal sentence, he was ordered to give security for costs.

Swanzy v. Swanzy, 4 K. & J. 237, followed.

Redondo v. Chayter, 4 Q.B.D. 453, commented on.

H. T. Beck for the plaintiff.

L. G. McCarthy for the defendant Hogarth.