

If I had any doubt as to the true construction of the meaning of the restriction that doubt should, upon a motion to commit, be resolved in favour of defendant.

The motion should be dismissed and with costs.

HON. MR. JUSTICE BRITTON.

JANUARY 24TH, 1913.

PALLANDT v. FLYNN.

4 O. W. N. 681.

*Interpleader—Issue Directed—Plaintiff Therein—Security by Claimant—Practice.*

BRITTON, J., refused to interfere with the terms of an order of the Master-in-Chambers directing an interpleader issue between a claimant and the execution creditor, on the ground that it was of no moment which party was plaintiff, and the requirement that the claimant in possession should give security, was in accord with the well-established practice.

Appeal by the Canadian Bank of Commerce from an order of the Master-in-Chambers, directing an interpleader issue.

R. C. H. Cassels, for Canadian Bank of Commerce.

J. Jennings, for execution creditor.

R. J. Maclellan, for Sheriff of Toronto.

HON. MR. JUSTICE BRITTON:—The execution debtor was the owner of certain shares of stock in the McIntyre Porcupine Mines Ltd.

The execution creditor directed the sheriff of Toronto to seize and sell this stock.

The Canadian Bank of Commerce claim the stock by assignment or pledge of it by Flynn to the bank in the regular course of banking.

The Master has made an order directing an issue between the execution creditor and the claimants.

The appeal is upon the following grounds:

(1) That there ought not to have been an issue directed as upon the undisputed facts these shares are the property of the bank as against the execution creditor, and it should have been as declared.

(2) That if an issue is to be tried, the execution creditor should be plaintiff in that issue and not the claimants, and