

client. I think Mr. Gwynne exercised his discretion rightly in the present case. The bank seeks information as to the affairs of this, their judgment debtor; and it may be necessary in the investigation of his books and accounts that a former partner (Jones) should be present to instruct counsel as the facts come out. My only doubt is as to whether the order should not go in the first instance for committal, and the defendant be allowed as an indulgence to attend at his own expense and submit to examination. However, as this is not sought for at present, the order will go as asked. Costs of the application to be paid by the judgment debtor."

Order accordingly.

### Chancery Division.

STREET, J.]

[Nov. 19, 1894.

OLIVER v. LOCKIE.

*Waters and watercourses—Easement—Dominant tenement—Servient tenement—Defined channel—R.S.O., c. 3, s. 35.*

The rule is that when an owner creates an artificial watercourse, discharging surplus water upon a neighbour's land, he obtains at the expiration of the statutory period a right to continue to discharge it, but the neighbour acquires no right to insist upon the continuance of the flow. The easement arises for the benefit of the dominant tenement. The owner of such a servient tenement is not a "person claiming right thereto" within s. 35 of R.S.O., c. 3. A defined channel is an essential part of a stream.

*Ennor v. Barwell*, 2 Giff. 410, distinguished.

Under the circumstances of this case it was

*Held*, that the owner of the servient tenement could not interfere with the user by the owner of the dominant tenement of water rising on her land.

*A. Monroe Grier* for the plaintiff.

*DuVernet and Milliken* for the defendant.

### Practice.

Chy. Div'l Court.]

JURY v. JURY.

[Jan. 10.

*Arrest—Ex parte order for—Setting aside—Jurisdiction—Rules 536, 1051—Sheriff.*

Rule 536 does not apply to cases of *ex parte* orders for arrest, which are specially provided for by Rule 1051; and a County Court judge has no jurisdiction to set aside his own order for arrest.

Where an order for arrest has been acted on by the sheriff, it should not be disturbed.

*W. H. Bartram* for the plaintiff.

No one appeared for the defendant.