

CARTWRIGHT, MASTER.

JUNE 6TH, 1903.

CHAMBERS.

## JOHNSTON v. LONDON AND PARIS EXCHANGE.

*Discovery—Production of Documents—Action for Penalties—Præcipe  
Order for Production by Defendants—Setting aside.*

Motion by defendants to set aside an order issued by plaintiff on præcipe for production of documents by defendants. The action was brought to recover penalties under sec. 17 of 63 Vict. ch. 24 (O.).

R. B. Beaumont, for defendants, contended that the order was futile and useless and therefore unnecessary.

George Bell, for plaintiff, contended that the order should not be set aside, but defendants should be left to claim privilege, if so advised.

THE MASTER.—There are no cases that are exactly in point. But *Malcolm v. Race*, 16 P. R. 330, does not seem to be distinguishable in principle. . . . This judgment was cited with approval in *Hopkins v. Smith*, 1 O. L. R. 659. In that case a motion was made similar to the one under consideration. I therefore make the order that was made by the Chancellor in that case, setting aside the order for production with costs to defendants in any event.

MEREDITH, J.

JUNE 6TH, 1903.

CHAMBERS.

## RE MOUNT v. MARA.

*Division Court—Jurisdiction—Amount in Dispute—Claim for Price  
of Horse—Sale by Wrongdoer—Contract or Tort—Prohibition.*

Motion by defendant for prohibition to a Division Court. The plaintiff sued for the price of a horse sold to defendant. There was no dispute as to the agreement for sale. The only dispute as to the bargain, was as to the time and manner of delivery of and payment for the horse. The horse was delivered to defendant by plaintiff's brother, in plaintiff's absence, and the price was paid to the brother. Plaintiff contended that the brother had no authority to receive payment, and, as it was so found, and also that the money never reached plaintiff, judgment was given against defendant for the price of the horse. This motion was made on the