

which was not in August, 1871, twenty years old, or any spruce or tamarac, has been cut on the said premises by the defendant, and the value of such timber.

And the defendant may have a reference, at his own risk as to costs, as to what, if any, of the trees now standing on the said land were twenty years old, and therefore "timber," in August, 1871.

Further directions and costs reserved until after the report of the referee.

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OSLER, J.A.

SEPTEMBER 28TH, 1903.

C.A.—CHAMBERS.

ALLEN v. CROZIER.

*Appeal—Leave—Security for Costs—Discretion—Peculiar Circumstances—Solicitor.*

Motion by defendant for leave to appeal from order of a Divisional Court (ante 736) affirming order of STREET, J., in Chambers, reversing order of Master in Chambers (ante 485), and setting aside a præcipe order for security for costs.

J. W. McCullough, for defendant.

T. H. Lloyd, Newmarket, for plaintiff.

OSLER, J.A.—I think that this diversion from the main channel of the litigation should go no further. It seems to me at least probable that the Court of Appeal would hold that it was open to the Courts below in their discretion to say that, under the peculiar circumstances, plaintiff ought not to be ordered to give security.

Defendant was plaintiff's solicitor when, as it is said, both the transactions to be investigated in this action occurred. One of these is an assignment of rents, absolute in form, but which, it seems clear—indeed it is not denied—cannot be sustained to that extent, and defendant has received under it and has in hand a considerable sum for which he must account to the plaintiff, as he says he is ready to do. Another relates to an assignment to defendant of certain Division Court judgments against plaintiff. These, it is said, defendant purchased while acting as plaintiff's solicitor, and can hold only to the extent of the sum he paid for them. It is true that this is to be determined in the action, but the circumstances under which the judgments were so acquired are such as might well be thought by the Court below to invite inquiry which a solicitor and officer of the Court ought not to