

ARMOUR, C. J., STREET, J. }  
FALCONBRIDGE, J. }

[Jan. 23.]

WILMOTT v. MCFARLANE.

*Jurisdiction—Appearance—Defence—Subject-matter of action.*

An appeal by the plaintiff from an order of the Master in Chambers dismissing a motion by the plaintiff to strike out the defence of the defendant Caldwell, upon the ground that it was a plea to the jurisdiction, and that the defendant, having been served with process out of the jurisdiction, should have moved to set aside the service, and not having done so, but having entered an appearance, could not now object to the jurisdiction. The defendant's objection to the jurisdiction was not, however, based upon the ground that the case did not come within Rule 271, but upon the ground that the relief sought by the plaintiff, viz., priority as to certain assets in the hands of the defendant Caldwell in the Province of Quebec, could not be granted by an Ontario Court.

*A. C. McMaster*, for the plaintiff, cited *Boyle v. Sacker*, 39 Ch. D. 249 ; *Preston v. Lamont*, 1 Ex. D. 361 ; *Bell v. Villeneuve*, 16 P. R. 413.

*W. M. Douglas*, for the defendant Caldwell, contended that the appearance only admitted the jurisdiction of the Court over the defendant and not over the subject matter of the action, and pointed out that in such cases as *Henderson v. Bank of Hamilton*, 23 O. R. 327, 20 A. R. 646, the question of jurisdiction was raised by plea after appearance, and, although here the defendant resided and was served out of the jurisdiction, that did not affect the question.

*Held*, that under the circumstances mentioned, the question of jurisdiction could be raised by the defence, and that the appearance did not necessarily give the Court jurisdiction over the subject-matter of the action.

Appeal dismissed with costs.

ARMOUR, C. J., STREET, J. }  
FALCONBRIDGE, J. }

[Jan. 31.]

KOHLES v. COSTELLO.

*Local Judge—Jurisdiction—Injunction—Rule 42 A (1419.)*

An appeal by the defendant from an order of the local Judge of the County of Wellington, continuing till the trial an interlocutory injunction granted by him, restraining the defendant from trespassing upon certain lands. The appeal was based upon the ground, among others, that the local Judge had no jurisdiction, without the consent of all parties, to grant an injunction for more than eight days. The defendant did not consent to the local Judge entertaining the motion ; but the solicitors for all parties resided in the County of Wellington, in which the action was brought.

Rule 42 A. (1419) provides that a local Judge may, in cases of emergency, grant an interlocutory injunction for a period not exceeding eight days ; and sub-rule (a) that in any action in which a local Judge has granted an interlocutory injunction under the next preceding clause, and in which all parties interested consent thereto, the local Judge may hear, determine and dispose of any