

Court of Appeal.]

[June 30.]

KNICKERBOCKER v. RATZ.

Costs—Settlement of action—Power of master or judge in chambers to dispose of costs—Consent—Principle of decision—Circumstances of case—Appeal.

An appeal by the plaintiffs from an order of a Divisional Court of the Chancery Division, 16 P.R. 30, affirming, as the result of a disagreement, an order of a Judge in Chambers, reversing an order of the Master in Chambers, upon a summary application, disposing of the costs of the action in favour of the plaintiffs, was allowed and the Master's order restored.

Held, (1) that he had a jurisdiction to make the order, which did not necessarily depend upon consent of the parties to go before him.

North v. Great Northern R.W. Co., 2 Giff. 64, and *Thompson v. Knights*, 7 Jur. N.S. 704, followed.

(2) That the Judge in Chambers had exercised his discretion and reversed the Master's order upon a wrong principle, and his discretion was appealable.

Wansley v. Smallwood, 11 A.R. 439, and *Crowther v. Elgood*, 34 Ch.D. 691, followed.

(3) Agreeing with the opinion of BOYD, C., in the court below, that when the action was begun the circumstances justified it, and there was nothing to take the case out of the ordinary rule that the person in the wrong shall answer in costs.

Proctor v. Bayley, 42 Ch.D. 390, distinguished.

W. M. Douglas for the appellants.

W. H. P. Clement for the respondents.

MANITOBA.

COURT OF QUEEN'S BENCH.

Full Court.]

[July 9.]

COMMERCIAL BANK v. ROKBY.

Demurrer—Duress—Promissory notes signed under threat of criminal prosecution—Undue influence.

Rehearing of demurrer to pleas overruled by Mr. JUSTICE BAIN.

The action was to recover a balance due upon certain promissory notes signed by the defendant, who had paid considerable sums on account.

The first plea demurred to alleged that the defendant had been induced to sign the notes in question by threats of a criminal prosecution in settlement of a claim preferred against him by the plaintiff, for which defendant was not really liable; that he had acted without legal or independent advice, and had been induced to believe that he was liable for the amount, and had signed the notes in that belief, and in consequence of such threats, although he had not really committed any crime in connection with the matter.

The other plea was one of counterclaim for the moneys paid on account of said notes, but it did not allege that such payments had been made under the influence of such threats or other pressure or undue influence.