

MASTER IN CHAMBERS.

JANUARY 23RD, 1913.

## SCULLY v. ONTARIO JOCKEY CLUB.

4 O. W. N. 678.

*Costs—Security for—Con. Rule 1198 (d)—Former Action—Unpaid  
Costs—Identity of Claims—Only one Defendant in Common—  
Rule not Applicable.*

MASTER-IN-CHAMBERS dismissed motion for security for costs under Con. Rule 1198 (d), by defendant Hendrie, on the ground that plaintiff had brought a similar action "for the same cause" against himself and three other defendants, which had been dismissed, and of which the costs had not been paid, holding that the claims in the two actions were, in fact, different, and, obviously, the parties were not the same.

*Lucas v. Cruikshank*, 13 P. R. 31, and

*Bynnter v. Dunne*, 10 Ir. L. R. Com. Law, 380, referred to.

Motion under C. R. 1198 (d) for security for costs.

C. F. Ritchie, for motion.

J. P. MacGregor, contra.

CARTWRIGHT, K.C., MASTER:—In this action the Ontario Jockey Club (Limited), Joseph E. Seagram and E. D. Duhaime and George M. Hendrie are defendants.

The motion is made on behalf of Mr. Hendrie only, on the ground that so far as he is concerned this is "for the same cause" as an action by the same plaintiff against J. M. Madigan, George M. Hendrie, J. F. Monck and W. P. Fraser, which has been dismissed, and of which the costs have admittedly not been paid. The wrongs complained of in this latter action took place on 12th August, 1911. Those of which the plaintiff now complains occurred on 23rd September, 1912.

These facts, together with the fact that Mr. Hendrie is the only defendant common to both actions, shew *prima facie* that Rule 1198 (d) cannot apply.

In the first action Hendrie is described as president of the Windsor Driving Park Association, and is charged with having conspired with his co-defendants to exclude plaintiff from every race track in Canada over which they had any control. In the second action Hendrie is said to be the executive head of the Canadian Racing Association and president of the Windsor Company. The charge now is that the defendants in this second action are trying to get a monopoly