

CARTWRIGHT, MASTER.

APRIL 26TH, 1909.

CHAMBERS.

GOLLEY & FINLEY v. CORE.

Practice—Cross-examination of Deponents on Affidavits Filed in Answer to Motion for Costs—Deponents Out of the Jurisdiction—Application for Order Requiring them to Come to Ontario for Cross-examination.

Motion by plaintiffs for an order for payment by defendants of the costs of the action, as in *Knickerbocker v. Ratz*, 16 P. R. 191, the action being no longer either possible or necessary.

A. R. Clute, for plaintiffs.

E. C. Spereman, for defendants.

THE MASTER:—The motion was adjourned to allow defendants to file affidavits. This has been done, and 3 affidavits have been filed in answer to the motion. They are all made by persons out of the jurisdiction, and counsel for the plaintiffs asks for an order requiring the deponents to come to this province to be cross-examined. He relied on *Smith v. Babcock*, 9 P. R. 97, and *Lick v. Rivers*, 1 O. L. R. 57. I think, however, that I must follow the decision in *Lefurgey v. Great West Land Co.*, 7 O. W. R. 738, 11 O. L. R. 617.

From a perusal of the material, it would seem that the amount involved is not very large. As one of the deponents lives in Pennsylvania, another in Illinois, and a third in California, cross-examination will prove relatively very costly, if taken.

It does not appear that any relevant facts are in dispute. The only question to be determined is, was the action reasonable and justifiable when brought? Is not this rather a question of law than of fact?

It would seem to be to the interests of both parties that the motion should be decided without additional expense, if possible.