

the award : that the duty of the court in this respect was of a purely ministerial nature, and there was, therefore, so far as the court was concerned, no "matter in question in the action" within the above rule, and the power of the court to make the order asked for, or any other judicatory order was gone.

Held, also, that under the order the whole jurisdiction as to discovery was in the hands of the arbitrator.

The rule that an order of the court carries with it "liberty to apply" though not expressly reserved, only applies when the order is one not of a final character.

LYDNEY AND WIGPOOL IRON ORE
COMPANY v. BIRD.

Imp. O. 55, r. 2—Ont. r. 429.

Security for costs—Time for applying.

[L. R. 23 Ch. D. 358.]

The old chancery rule that an application for security for the costs of an action must be made promptly, is inconsistent with the above rule, and must be taken to have been abrogated :

Held, therefore, that an application by a defendant for security for the costs of an action brought against him by a limited Company might be made after reply and notice of trial.

IN RE BROWN, WARD v. MORSE.

Claim — Counter-claim — Costs where both succeed.

[L. R. 23 Ch. D. 377.]

When the plaintiff's claim and the defendant's counter-claim have both been successful, the plaintiff, in the absence of any special directions to the contrary, is entitled to the general costs of the action, notwithstanding that the result of the litigation is in favour of the defendant, and the defendant is entitled to receive from the plaintiff the costs of the counter-claim.

There will be no apportionment of such costs as would have been duplicated had the counter-claim been the subject of an independent action, but the plaintiff is not to recover as costs of the action any costs fairly attributable to the counter-claim.

KENNEDY v. LYELL.

Discovery—Privileged communications.

If the information of a party to an action as to matters of which discovery is sought, arises from privileged communications which he is not bound to disclose, as for example from information procured by his solicitors or their agents in and for the purpose of his defence to the action, and if the matters inquired into are not simple matters of fact, patent to the senses, as for example, if they are questions of pedigree, he ought not to be compelled to answer on his belief as to those matters.

Per COTTON, L. J.—"What is the ground on which all professional privilege is claimed? It is this—that having regard to the technical nature of our law it is of the utmost importance that no layman should be in anyway hindered from having the utmost freedom in communicating with his professional advisers, whether counsel or solicitors. There is also another principle, that no one is to be fettered in obtaining materials for his defence, and if he, for the purpose of his defence, obtains evidence, the adverse party cannot ask to see it before the trial. I do not think that this principle applies here, but I mention it that I may not be supposed to limit protection to the simple professional privilege which arises where information has been obtained through a solicitor."

ONTARIO.

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ASSESSMENT APPEALS.

IN RE MIDLAND RAILWAY CO. OF CANADA
AND TOWNSHIP OF NORTH GWILLIMBURY.

Assessment Act, s. 25—Land of Railway Co.—How to be assessed.

[McDOUGALL, J. J.—Sept., 1883.]

The assessment of the Railway Company's lands in this township, was as follows :

1 1-2 acres	-	-	\$2,500.00
50 acres	-	-	2,500.00
			\$5,000.00

The evidence showed that the average assessment of the ordinary farming lands on either side of the roadway (including the buildings) was \$31.00 an acre. There was no separate