

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

*Aylsworth*, for the sheriff.  
*Akers*, for the execution creditors.  
*Shepley*, for the claimants.

Proudfoot, J.] [Dec. 1, 1885.]

McELHERAN V. LONDON MASONIC MUTUAL BENEFIT ASSOCIATION.

*Adverse claims—Right to interplead—Summary application—Chancery practice—Sec. 17, sub-sec. 6, and Rule 2, O. J. A.—Payment into Court—Costs—Indemnity—Staying action.*

The plaintiff and J. P. both claimed from the defendants payment of the moneys due under a certain certificate of membership issued by the defendants to T. P., deceased, the plaintiff claiming as administrator of T. P., and J. P. claiming that the certificate had been endorsed to her by the deceased. It appeared that a duplicate certificate had issued to T. P. upon his alleging that he had lost the one originally issued. The defendants were always willing to pay to any one who might be entitled, and upon this action being brought applied for an interpleader order in respect of the adverse claims. J. P. did not appear in answer to the application, and her claim was barred.

*Held*, that there was a right to interpleader upon a summary application either under sec. 17, sub-sec. 6, O. J. A., or under the former practice of the Court of Chancery. Rule 2, O. J. A., does not extinguish any right to interplead that formerly existed; it regulates the practice only, and enables a defendant to obtain relief upon summary application, where formerly it would have been necessary to file a bill.

*Held*, also, that the defendants were entitled to their costs of the action and application, and to retain them out of the funds in their hands, and that the balance should be paid to the plaintiff instead of into Court, as the other claimant had withdrawn upon the plaintiff indemnifying the defendants against the production of the original certificate, and that the action should be stayed.

*Shepley*, for the plaintiff.  
*A. H. Marsh*, for the defendants.

Chan. Div.] [Dec. 3, 1885.]

SMITH ET AL. V. GREY ET AL.

*Patent suit—Particulars—35 Vict. ch. 26 sec. 24 (D).*

In an action for an infringement of a patent the defendants denied (4) the novelty of the invention, and (6) that the plaintiff was the first and true inventor.

PROUDFOOT, J., ordered the defendants to deliver particulars under these defences, stating in what respects the defendants deny that the plaintiff's patent was for any new machine, etc., and the dates and occasions when, and the places where, the prior user of the said invention, or any material part thereof, took place, and the names of the persons by whom the prior user was had.

On appeal from this order the Divisional Court (BOYD, C., FERGUSON, J.) was divided in opinion, and the order was therefore affirmed.

*Per* BOYD, C.—In the absence of any legislation or rules of Court upon the subject, the judge has no power or right to prescribe so minutely what shall be disclosed in the particulars. There has been no change in the practice at law since *Mills v. Scott*, 5 U. C. R. 360, and there is no settled practice in equity, where it is quite a recent innovation to apply for particulars. The statute, 35 Vict. ch. 26 s. 24 (D), goes no further than to justify such general order for particulars as is usual in other cases.

*Per* FERGUSON, J.—The decision in *Mills v. Scott* was while 7 Geo. IV. ch. 5 was in force, which did not contain any provisions regarding particulars, and the orders in that case were made under the general practice of the Court; but 35 Vict. ch. 26 sec. 24 (D.) gives general power to make such order as may seem fit respecting the proceedings in the action; the delivery of particulars is a proceeding, and there was therefore jurisdiction to make the order. The order was a reasonable one, and not too comprehensive in its terms, and should therefore be affirmed.

*F. R. Powell*, for the appeal.  
*Mervyn MacKenzie*, contra.