But for all that appears these parties can come. They are to testify in their own interest and have control of the cause. Then why should they not come? It is very important for the ends of justice that witnesses should be personally examined before the jury; and this applies with much greater force, as I have said, to parties to the cause establishing by their evidence their own case. Preëminently in their case there should be cross-examination before the jury, where it is possible.

I think the plaintiffs, to entitle themselves to this commission, should have shown some great and pressing inconvenience preventing their personal attendance; but they shew nothing but the fact that they reside abroad. *Castelli* v. *Groome*, 18 Q. B. 490, completely justifies my dismissing this summons. Costs to be costs in the cause to the defendant.

Summons discharged.

See Ch. Arch. 12th ed. 330, 337; *Fischer* v. *Hahn*, 32 L. J. C. P. 209; *Castelli* v. *Groom*, 18 Q. B. 490, 21 L. J. Q. B. 308.

Lewis v. Teale et al.

Replevin Act—C. L. P. Act—Pleading several matters—Interlocutory judgment.

The provisions of the Common Law Procedure Act as to pleading several matters apply to replevin.

A plea of the general issue by statute and a plea denying the property of the plaintiff in the goods cannot be pleaded together without leave.

An interlocutory judgment is well signed in replevin by following the directions given in Rule 26 H. T., 13 Vic.

[Chambers, April 4, 1870—*Mr. Dalton.*]

Replevin by the colonel of a volunteer regiment against two of his captains for some band instruments.

The defendant Macdonald pleaded, without leave obtained: 1. *Non cepit*, by statute; 2. *Non detinet*, by statute; 3. Goods not the plaintiff's; and the defendant Teale pleaded in addition, also without leave, as a fourth plea: No notice of action.

The plaintiff thereupon signed interlocutory judgment as on default of plea by filing in the proper office a copy of the declaration, with the words "Interlocutory judgment signed this eighteenth day of March, A.D. 1870," in the margin, and signed by the Deputy Clerk of the Crown.

J. A. Boyd, for the defendants, applied to set aside the interlocutory judgment with costs, on the grounds—1. That the pleas were properly pleaded under the Replevin Act. sec. 15, no leave being necessary. 2. That, even if leave necessary, plaintiff should have moved to set the pleas aside, and should not have signed judgment. 3. That as to the defendant Macdonald, the pleas are allowable without an order by the 112th sec. of C. L. P. Act. 4. That the judgment is irregular in form, it not appearing to be a judgment of *nil dicit*, and in not praying for assessment and return of the goods.

The following authorities were cited on the argument: C. L. P. Act, sec. 113; Con Stat. U. C. cap. 29, secs. 15, 16; 23 Vic. cap. 45, sec. 9; *Wakefield* v. *Bruce*, 5 Prac. R. 77; *Stewart* v. *Lynar*, 1 Ir. L. R. 193; *Reid et al* v. *New*, 4 Prac. Rep. 25; *O'Donohoe* v. *Maguire*, 1 Prac. Rep. 131; *Johnstone* v. *Johnstone*, 8 U. C. L. J. 46; *Leeson* v. *Higgins*, 4 Prac. Rep. 340; *Chadsey* v. *Ransom*, 17 U. C. C. P. 629.

Mr. Dalton—The first question is in substance whether the provisions of the Common Law Procedure Act apply to pleadings in the action of replevin.

If the 15th section of the Replevin Act stood alone, no doubt the defendant might plead several pleas without leave of the court, but the evidence is, to my mind, very strong that the provisions of the Common Law Procedure Act as to pleadings are intended to apply to replevin. It was passed after the Replevin Act, and the expressions in the 96th, 113th and 114th sections shew such intention. The judges thought so, for in Rule No 2 of the rules passed in pursuance of the Common Law Procedure Act, avowries and cognizances are put upon the footing of other pleadings.

Mr. Boyd has referred me to a decision of the late chief justice of the Queen's Bench—*Leeson* v. *Higgins*, 4 Prac. Rep. 340—as to the Ejectment Act, which would from analogy bear upon the present question; but, on the other hand, it has been decided by the court of Common Pleas, in *Chadsey* v. *Ransom*, *ante*, that the 222nd section of this act does apply to proceedings in ejectment, and the judgment in that case justified the act of the judge in allowing at *Nisi Prius* a new claim of title to be added for the plaintiff.

All considerations of practical convenience are against the construction Mr. Boyd contends for.

Then the proper mode of taking advantage of a breach of the rule is to sign judgment: section 113.

As to the pleas of defendant Macdonald, I think they are not within the 112th section. The general issue by statute has a very different meaning from any plea mentioned in that clause

The form of interlocutory judgment allowed by Rule 26 of H. T. 13 Vic. I have always understood to apply to every case where the judgment to be signed was interlocutory.

As to the merits, the judgment should be set aside on payment of costs.

The Union Permanent Building and Savings Society v. The Citizens Insurance and Investment Co.

Service on foreign corporation—Contract.

Service of process was effected on an insurance company whose head office was in Montreal, out of the jurisdiction, by serving the manager there. The insurance, however, was effected, and the policy delivered in Toronto, though signed and sealed by the Company in Montreal. *Held*, that the service was good.

[Chambers, May 11, 1870.]

J. F. Smith obtained a summons on behalf of defendants calling on the plaintiffs to show cause why the writ of summons and the service thereof on the manager of the defendants, at the head office in Montreal, should not be set aside on the grounds, 1, that the defendants are a foreign corporation, domiciled out of the jurisdiction: 2, that the cause of action arose out of the jurisdiction; and 3, that the policy on which the