

Province of Ontario.

HIGH COURT OF JUSTICE.

WINCHESTER, Master.]

[Sept., 1896.]

BOLTON v. LANGMUIR.

Writ of Summons—Service out of jurisdiction—Defendant's nationality.

Motion by the defendant to set aside an order allowing a writ of summons to be issued for service out of the jurisdiction, together with the writ of summons and the service thereof; on the grounds that the cause of action did not arise within the jurisdiction of the Court, and that the defendant not being a British subject should have been served with a notice in lieu of the writ, and not with a copy of the writ.

It appeared that the writ had been served substitutionally pursuant to the order to that effect, on the defendant's solicitor within the jurisdiction; that the defendant was born of a British father in the United States, whence he had removed to France, where he was residing at the date of service.

It was claimed for the plaintiff that a person could be both a British subject and an American citizen at the same time, and that the defendant had never taken the necessary steps to divest himself of his British citizenship.

Without deciding the question of citizenship, the Master held that the service was good, having been effected within the jurisdiction under the order for substitutional service.

Ford v. Shephard, 34 W. R. 63, followed.

E. B. Brown, for defendant.

J. MacGregor, for plaintiff.

MEREDITH, J.]

[Jan. 2.]

IN RE CENTRAL BANK OF CANADA.

Appeal—Leave—Winding-up Act—Successive applications—Special circumstances—Terms.

Orders having been made in the matter of the winding up of an insolvent bank for payment of certain moneys out of Court to the executors of the purchaser of the assets, and the moneys having been paid out to them, the Receiver-General for Canada asserted a claim for such moneys under ss. 40 and 41 of the Winding-up Act, R.S.C. c. 129, and, not having been a party to the applications for payment out made by the executors, presented a petition for payment over to him by them, or repayment into Court of such moneys, or in the alternative, for leave to appeal from such orders. This petition was dismissed, upon the ground that the petitioner was not entitled to complain, even if the moneys had been improperly paid out.

Upon an application by the petitioner for leave to appeal to the Court of Appeal from the order dismissing his petition,

Held, that a Judge of the High Court has power to grant the leave sought, the application not being in effect a second application for leave to appeal from the orders for payment out.