præcipe, under Rule 1242, by an officer of the Court, requiring one of the plaintiffs to give security for costs and staying proceedings until security should be given. The plaintiffs, desiring to arrest the defendant, were refused an order because of the stay of proceedings, and then applied for and obtained an order allowing them to deposit $400 with an officer of the Court instead of giving a bond for security of costs, and also declaring it to be without prejudice to the right of the plaintiffs to set aside the order staying proceedings, and they paid the $400 to the officer accordingly.

Held, that it appeared from the endorsement on the writ that the plaintiffs resided out of Ontario, and that the issue of an order for security under Rule 1242 was thereby warranted; but that the order issued, being against one plaintiff only, was irregular and might have been set aside; it was not void, however, and was good until set aside; and having been complied with, as it was by the deposit of the money with the officer, the compliance made it good, and it could not afterwards be set aside, notwithstanding the reservation in the order.

Semble, that if it had appeared by the indorsement, as it afterwards did by affidavit, that one of the plaintiffs in fact resided in Ontario, the order for security would have been void, and would have been set aside notwithstanding the compliance with it.

W. H. Blake for plaintiff.

W. M. Douglas for defendant.

BOYD, C.] [April 15.

STEPHENSON *v.* DALLAS.

Judgment under Rule 739—When granted—Leave to defend—Terms—Evidence on motion—Ex parte examination of witness.

When the facts are not clear and free from doubt, leave to sign judgment under Rule 739 should not be granted.

Bank of Minnesota v. *Page*, 14 A.R., 351, followed.

But where a distinct defence is not made out terms should be imposed upon the defendant upon his being allowed to defend, as a pledge of his *bona fides*; and in this case the defendant was required to pay into Court or secure one-half of the amount claimed.

The examination of a witness conducted by one party without notice to his opponent, is irregular and inadmissible as evidence upon a motion.

H. C. Fowler for the plaintiff.

Walter Macdonald for the defendant.

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