the sheriff should also be paid out of the fund, and also the costs of the order directing the sheriff to sell, and the costs of this application, and that after payment of these charges the fund should be distributed rateably among the creditors.

Aylesworth, for the plaintiffs.

Holman, contra.

Osler, J. A.] [Oct. 28.

IN RE GUY V. GRAND TRUNK RY.

Acquiescence in jurisdiction—Prohibition—Division Court—Foreign corporation.

The defendants, a foreign corporation, having their head office in Montreal, and not residing or carrying on business in this Province (as held in *Re Ahrens* v. *McGilligat*, 23 C. P. 171, and *Re Westover* v. *Turner*, 26 C.P.), were sued by the plaintiff in the first Division Court of the united counties of Northumberland and Durham, within the jurisdiction of which the cause of action arose. The summons was served upon the local station agent of the defendants at Bowmanville. No notice disputing the jurisdiction was given by the defendants until the trial of the cause, when counsel appeared on their behalf and objected to the jurisdiction of the Division Court because the defendants resided out of the Province. The judge of the Division Court overruled the objection, and proceeded to try the case, the defendants' counsel cross-examining the plaintiff's witnesses and addressing the jury. The amount of the claim was admitted and judgment was given for the plaintiff.

The defendants then moved for prohibition.

Held, that the service on the defendants was a nullity. *Held*, also, that these defendants cannot be compelled to appear to a summons issued against them in an ordinary Division Court action, because no means have been provided for effecting service upon them in such an action.

But *held*, that the defendants had precluded themselves by their appearance and conduct at the trial from objecting to the jurisdiction on account of the absence of power to compel their appearance, and the Court having jurisdiction over the cause of action as to its locality, nature and amount, prohibition ought to be refused.

Aylesworth, for the defendants.

Holman, for the plaintiff.

Boyd, C.] [October 29.

ANGLO-AMERICAN V. ROWLIN.

Security for costs—Meritorious defence.

The local Master at Hamilton, on the application of the plaintiff, set aside a *præcipe* order for security of costs, the plaintiff swearing, and the defendant not denying, on affidavit that the defendant had no good defence to the action. In a letter written by the defendant to the plaintiff, the former said, "My note for $750 (the note sued on) in your favour is due on the 24th. You will kindly give me another month . . . when it will be paid in full."

Upon appeal to a judge in Chambers, *Held* that the defendant had no right to compel the plaintiff to give security for costs unless he had a defence on the merits, and that the failure to answer the affidavit of the plaintiff, and to explain the admissions in his letter, warranted the conclusion that he had no defence.

Bank of Nova Scotia v. *La Roche*, 9 P. R. 903, dissented from and *Winterfield* v. *Bradman*, 3 Q. B. D. 325, and *Du St. Marten* v. *Davis*, 28 Sol. J. 392, W. N. 1884, p. 86, followed.

Watson, for the appeal.

William Bell, contra.

LAW STUDENTS' DEPARTMENT.

LAW SOCIETY.

EXAMINATION QUESTIONS.

TRINITY TERM:

FIRST INTERMEDIATE.

Equity.

1. Distinguish between the effects of constructive notice on the one hand, and mere want of caution on the other, and illustrate each by an example.

2. Illustrate by an example the maxim that Equity looks upon that as done which ought to have been done.