

McANDREW, OFFICIAL REFEREE. JANUARY 17TH, 1905.

CHAMBERS.

LEVI v. EDWARDS.

Evidence—Foreign Commission—Examination of Plaintiff on his own Behalf—Defendant to Counterclaim—Examination for Discovery.

Motion by defendant for an order to examine Morris J. Levi, a member of plaintiff firm, for discovery, upon commission in New York; and motion by plaintiffs for an order to examine the same person upon commission for the purpose of evidence upon the trial of the counterclaim.

The action was upon promissory notes. Defendant admitted the claim, but counterclaimed for damages for malicious prosecution.

R. McKay, for defendant.

G. M. Clark, for plaintiffs.

MR. McANDREW (sitting for the Master in Chambers):—Defendant is clearly entitled to an order for examination for discovery of Levi, and the order may go.

The counterclaim is to be considered as an independent action, and Levi is in the position of a defendant, and it cannot be said that he has chosen the forum for the trial of the counterclaim. . . . Although, as a general rule, it is inadvisable to have the evidence of any party to an action taken upon commission when he himself applies for the order, in the circumstances of this case I think the order should go.

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DIVISIONAL COURT.

KELLY v. JOURNAL PRINTING CO. OF OTTAWA.

Defamation—Verdict for Defendant—Motion to Set aside—Weight of Evidence—Innuendo—Proof—Jury—Reasonable Verdict.

Motion by plaintiff to set aside the verdict and judgment for defendants in an action for libel tried before BRITTON, J., and a jury, and for a new trial.