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CARTWRIGHT, MASTER.

MAY 29TH, 1903.

CHAMBERS.

SMITH v. McDEARMOTT.

*Evidence — Foreign Commission — Examination of Defendant on his own Behalf—Place for Taking Evidence—Expenses of Opposite Party—Costs of Application.*

Motion by defendant H. H. Lee for an order directing the issue of two commissions, one to take the evidence of A. M. McDearmott and Oscar G. Lee at Kansas City, and the other to take the evidence of applicant himself at Kingfisher, in Oklahoma Territory.

W. D. Gwynne, for the applicant.

W. N. Ferguson, for the plaintiffs.

THE MASTER.—I think under the cases the material is prima facie sufficient to justify the issue of a commission to examine the witnesses said to be resident at Kansas City. I have looked at the numerous cases cited on the argument and the English cases therein referred to. I do not see that any good purpose will be served by commenting upon them, as they shew that each case must be decided on its own facts and circumstances.

[Porter v. Boulton, 15 P. R. 318, and Mills v. Mills, 12 P. R. 472, referred to.]

I have examined the map, and from it I gather that Kingfisher, where the applicant is said to reside, is not very far distant from Kansas City. Under these circumstances, the order I propose to make is as follows: One commission only should issue. If the appellant so desires, it may be to Kansas City, but I would suggest that some nearer point, such as Chicago, should be named, as, following Mills v. Mills, I