

does not appear fitting that any other order should be made. The case, so far as it has developed, will remain in statu quo, to be taken up and continued after the war is over.

If either party chooses to take out an order to stay proceedings till the war ends, it may be issued—but it is only expressing what the law declares.

---

BOYD, C., IN CHAMBERS.

NOVEMBER 4TH, 1915.

JARVIS v. KEITH.

*Discovery — Production of Documents and Examination of Parties—Action for Possession and Mesne Profits—Preliminary Issue as to Right to Possession—Postponement of Discovery as to Measure of Mesne Profits—Rule 352—Costs.*

Appeal by the defendant A. Keith from an order of the Master in Chambers requiring the appellant to file a better affidavit on production of documents and to attend for further examination for discovery.

H. S. White, for the appellant.

E. D. Armour, K.C., for the plaintiff, respondent.

THE CHANCELLOR said that the action was for possession and mesne profits; and all the controversy on the pleadings was as to whether or not the plaintiff elected to renew a lease to the defendants at the expiry of the term. The defendants alleged an election to renew. This was traversed by the plaintiff, who said that there was no valid election, and that there were other circumstances which estopped the defendants from shewing that there was an election. If this issue should be determined adversely to the defendants, there would be no further controversy as to the right to possession and mesne profits. It seemed eminently proper first to determine this outstanding question of fact and law before investigating the amount of mesne profits. That would be a matter of course consequence if the defence should fail; and, if a reference should be needed or directed, the costs would be given against the party to blame. Rule 352 might well be invoked to stop the discovery as to the measure of mesne profits.

To this extent the appeal should be allowed; as to the other matters mentioned at the argument the order of the Master should be affirmed; costs in the cause.