

BERTHOLD & JENNINGS LUMBER CO. v. HOLTON LUMBER CO.  
(LTD.)—MASTER IN CHAMBERS—DEC. 7.

*County Court Action — Judgment in — Delivery of Counterclaim Ordered — Transfer to Another County — Discretion of Court — Con. Rule 255.]* — Motion by the defendants for an order transferring the action from the County Court of York to the County Court of Hastings. This was an action in the County Court of the County of York in which the plaintiffs on 4th December obtained judgment for \$119.30 with a proviso that execution should not issue thereon without leave or until a counterclaim of defendants shall have been disposed of. The defendants were further ordered to “forthwith deliver a counterclaim and set same down for trial for the sittings of this Court commencing the third day of December, 1912.” In default of so setting down the plaintiffs were to be at liberty to issue execution “unless otherwise ordered by this Court.” The defendants have not yet delivered any counterclaim, but move to have the action transferred to the County Court of Hastings on the ground of that being the proper place for the trial of the counterclaim. The MASTER IN CHAMBERS: “It was not denied that if the whole case was going to trial the present motion would probably succeed. It was contended, however, that under the facts and the terms of the judgment in plaintiffs’ favour, no order could now be made. I agree with this view for two reasons—(1) There is no power in the Master in Chambers to transfer a judgment obtained in one County Court to another, which would be the effect of acceding to defendants’ motion—(2) The terms of that judgment preclude the defendant from doing otherwise than complying with its conditions unless the same were varied on an appeal, which cannot be heard here. It may further be urged that defendants having obtained an indulgence under that judgment cannot now seek to vary its terms. By indulgence I mean the stay of issue of execution until the counterclaim has been disposed of.—No doubt this is usually directed.—See *Holmsted & Langton*, 3rd ed., p. 801. But Con. Rule 255 leaves this and other terms to the discretion of the Court or Judge. Here that discretion has been exercised, and I at least have no power, even if I had the inclination, to interfere with it.” Motion dismissed with costs to the Berthold Co. in the counterclaim in any event. F. Aylesworth, for the defendants. R. W. Hart, for the plaintiffs.