

to the defendant. The corresponding English Rule is differently worded and speaks of "the opposite parties." Judgment: There do not seem to be any decisions in our own Courts on the point now under consideration. Under the English Rule there has not come to my notice anything except the judgment of the Court of Appeal in *Wilson v. Raffalovich*, 7 Q.B.D. 553, 560, where it was held, reversing the decision of the Court below, that the nominal "plaintiffs on the record must be taken to be the parties conducting the litigation." If this applies to our procedure it would seem to be decisive, unless the words "adverse in interest" in Con. Rule 439 are to be held to limit its operation—as at present advised I do not think this is so. They seem rather intended to amplify it, as was held to be the case in *Bradley v. Clarke*, 9 P.R. 410. What weight is to be given to the examination, or how far it will avail the defendant, is not at present to be dealt with. The *Wilson* case, *supra*, shews that the Court will not allow the technical form of the action to be used to work injustice—see per Cotton, L.J., at p. 561. According to the best opinion I can form, the motion must be dismissed, but with costs in the cause, as the point is new and by no means self-evident. H. D. Gamble, K.C., for the plaintiffs. F. R. Mackelean, for the defendant.

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BOYLE v. McCABE—DIVISIONAL COURT—JUNE 20.

*Security for Costs—Defendant out of Jurisdiction—Real Actor—Onus.*]—Appeal by the plaintiff from the order of RIDDELL, J., in Chambers of June 12th, ante 1293, allowing the defendant's appeal from an order of the Master in Chambers, ante 1248. The appeal was heard by MEREDITH, C.J., TEETZEL and LATCHFORD, JJ., and dismissed with costs. C. Kappel, for the plaintiff. R. G. Smyth, for the defendant.

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HOLDAWAY v. PERRIN—DIVISIONAL COURT—JUNE 20.

*Negligence—Defective System—Answers of Jury—Common Law and Statute.*]—Appeal by the defendants from the judgment of Falconbridge, C.J.K.B., ante 1055. The appeal was heard before MEREDITH, C.J., TEETZEL and LATCHFORD, JJ., and dismissed with costs. T. G. Meredith, K.C., for the defendants. J. M. McEvoy, for the plaintiff.