

Master's Office.] RE MIDLAND RY. AND TOWNSHIPS OF UXBRIDGE AND THORAH.

[Ass. App.]

to the case, which are in the possession or power of the opposite party; that is a discovery in aid or for the purposes of proof, so far as relates to the party's case.

When the object of the production is accomplished it may be reasonably inferred that the Court will not constitute itself the custodian of such documents, or impound them in the interest of either party; and the cases bear out this view.

In *Small v. Attwood*, 1 Y. & C. Ex. 37, the Court held that when books, etc., were brought into Court for the inspection and examination of the plaintiff, that object having been answered the books should go back to the custody of the party producing them; and that if subsequently required for the purposes of any inquiries directed by the decree, the Master would use his discretion in requiring them to be produced in his office.

But the plaintiffs ask that, in consequence of the way in which the books have been tampered with, they should be impounded until the inquiry is terminated. *Beckford v. Wildman*, 16 Ves. 483, is against this proposition. In that case a bill was filed to set aside two conveyances of the Quebec Plantations, in Jamaica, and a motion was made that these instruments should be deposited with the Master for safe custody, on the ground that there were material variations between them. Lord Eldon refused the motion, stating that where the object of the suit was to destroy the deed, the plaintiff had a right to have it produced, and left in the hands of the Clerk of the Court, for the usual purposes of inspection, &c.; that, although the variations complained of did exist, he would not order the deeds to be deposited or impounded for safe keeping, no case of danger that they would not be produced at the hearing, having been established.

In *Walker v. Cooke*, 3 Y. & C. Ex. 277, a motion was made to re-deliver to the defendant certain bills of exchange and promissory notes which had been deposited by him in Court under the usual order. The motion was opposed on the ground that the plaintiff was advised to take criminal proceedings against the defendant, in respect of such bills and notes—the plaintiff denying the genuineness of his apparent endorsement to one of the notes. Alderson, B., said he would make no order then, but directed that the bills and notes should remain a reason-

able time in Court, to see whether the plaintiff would take the intended criminal proceedings against the defendant.

As to the books being taken out of the jurisdiction, *Gabbett v. Cavendish*, 3 Swans. 267, may be referred to, where, on proof that certain books in Dublin "were of consequence to the business carried on there," Eyre, C. B., excused their non-production in London, and made an order that the defendant should deliver a schedule upon oath of the papers in Dublin, and that the plaintiff should have copies of all such as he pleased. It is proved here that the books now asked for are material to the defendant's business in Montreal.

The case of *Sidden v. Siddiard*, 1 Sim. 388, decides what is the jurisdiction of the Master in similar cases. In that case Sir Anthony Hart, V.C., after consultation with Lord Lyndhurst, L.C., and Sir John Leach, M.R., held, that under the usual order for the production of documents in the Master's office, the Master was at liberty to direct either party to leave them in his office so long as he thought any useful purpose might be answered by their remaining there, and then to allow the party producing to take them back. See, also, *Hanna v. Dunn*, 6 Madd. 340 and Cons. Ch. Orders 222.

In *Ex parte Clarke*, Jac. 389, the documents produced in the Master's office were directed to be retained until a proper inspection of them was obtained, and six weeks was allowed for that purpose. Here the books have been in the office for about a year; but in case the plaintiffs desire a further inspection they may be detained in the office for a week and then delivered out to the defendant.

ASSESSMENT APPEALS, COUNTY OF ONTARIO.

RE MIDLAND RAILWAY AND TOWNSHIPS OF UXBRIDGE AND THORAH.

Assessment of railways—Average value of land in locality—Fences.

Held, that the average value per acre of the lots or farms through which the railway passes must be taken as the value per acre of the roadway occupied by the company.

Also, that the value of the buildings on the farms should not be excluded from such average value.

Also, that the railway fences are part of the superstructure, and, as such, exempt from assessment.

[Whitby, July 26th, 1883.]