The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, KELLY, and MASTEN, JJ.

F. C. Richardson, for the appellant.

R. T. Harding, for the plaintiff, respondent.

RIDDELL, J., in a written judgment, said that this action was begun in February, 1915; the plaintiff alleged that he and the defendant had entered into an agreement whereby they were to sell a certain United States patent partly for cash and partly on time or on royalty payments, the plaintiff to receive one-fifth of the money as it was paid in until the defendant received $1,500, and then the remainder of the receipts; that a sale was made whereby the defendant received $1,000, and was to receive a royalty of $1.50 for each machine manufactured; and the plaintiff claimed his share.

At the trial before the Chancellor, in May, 1915, judgment went for the plaintiff for $150 and costs on the County Court scale and declaring the plaintiff entitled to 20 per cent. of all royalties thereafter received by the defendant from the purchasing company, after that company should be recouped for the advance payment of $1,000. There was no appeal; the judgment was properly entered, and was in full force.

In October, 1916, the plaintiff moved for an order for a receiver, for the taking of accounts, etc., and the Chancellor made the order now appealed against, which directed that an account be taken, pursuant to the judgment, of the royalties received by the defendant since the date of the judgment and of the moneys (if any) paid by the defendant to the plaintiff since the date of the judgment out of the royalties pursuant to the judgment; reserving further directions and costs.

It was not contended that this was a correction of the judgment by the Chancellor as trial Judge; but it was said that the order was made under Rule 65 by the Chancellor sitting as any other Judge might in Court.

The power of the Court, in a proper case, to make an order under this Rule at any stage of the action was undoubted: see the cases in England under the corresponding Rule (Order xxxiii., r. 2) referred to in the Red Book for 1917, p. 474, and in the White Book for 1917, pp. 560 et seq. But an order such as this, as to matter subsequent to the trial, should not have been made.

Reference to Witham v. Vane, [1884] W.N. 98; Stewart v. Henderson (1914), 30 O.L.R. 447, 460.

Meyers v. Hamilton Provident and Loan Society (1892), 15 P.R. 39, was relied upon, but that was quite a different case;