

security for costs, this action was dismissed and the costs are unpaid—again in 1905 he had begun an action to establish a claim to the same land with the same result. It was therefore proper for the Master of Titles to cause him to be notified. Upon being notified he filed a claim. On the 24th April, 1911, the Master of Titles decided that if Boyle were really the brother of Mrs. McCabe as he claims, and she denies, he was entitled to a 1-6 share in the land. An appeal from this finding taken by Boyle, was abandoned on the 11th May, 1911.

On the 12th May, the Master of Titles referred the question of the identity of Boyle to the Court, naming Boyle as plaintiff and Mrs. McCabe as defendant, unless the Court should think fit to order otherwise, and stated that a commission would be necessary.

Mr. Justice Middleton on the 19th May made an order for the trial of an issue to be tried at the non-jury sittings at Toronto with Boyle as plaintiff and Mrs. McCabe as defendant, but that the naming of Boyle as plaintiff "shall be without prejudice to his right and position in regard to the pending or any further motion by the said . . . McCabe for security for costs." The application for security for costs came on before the Master in Chambers and he gave judgment dismissing the application on May 31st. [Reference to the reasons for judgment set out ante, 1248.]

There is no mystery about the rules for determining whether security for costs will be ordered against a litigant outside the jurisdiction of the Court—no one, for that reason, will be ordered to give security unless he is a real actor, the form being immaterial. In the ordinary case it is the plaintiff who is such actor, but in cases of interpleader, e.g., both parties may be considered actors, or the party substantially moving in the issue: *Swain v. Stoddart*, 12 P.R. 490; *Knickerbocker v. Webster*, 17 P.R. 189; *Re Milward*, [1900] 1 Ch. 405; *Re Foresters & Castner*, 14 P.R. 47.

In the present case, Mrs. McCabe desiring to have her title to certain land put in a more satisfactory condition, puts the law in motion. She is the actor. A claimant Boyle appears and, until that claim is disposed of, the desire of Mrs. McCabe cannot be gratified. If she then dropped all proceedings, she could not procure her title and the continuation of the proceedings was in her hands as *domina litis*. She is still the actor just as in *Shepherd v. Hayball*, 13 Gr. 681, in which the right of the plaintiff to an order under the Quietening Titles Act was contested by the defendant: and *Spragge, V.C.*, set aside an order for security for costs made against him.