

son who is not a party to this proceeding. If it is to be redeposited to his account he should give the necessary direction or endorsement. Even if the drawer had been the garnishee I do not think that an order absolute could have been made as against him. The difficulty has arisen from the solicitors being in possession of the cheque. Their wisest course would have been to return the cheque with a notice to the defendant or his solicitors that their costs had not been paid, and that they looked to the proceeds of the action for payment. See *De Santes v. C. P. R.*, 14 O. L. R. 108, and cases cited. This may yet be done and may probably result in satisfaction of the claim of the applicants. If not an attaching order might issue in respect of the money then in the possession of the defendant.

As the matter stands at present the present attaching order must be discharged with costs to the bank, fixed at \$5. The debtor is not entitled to any costs as it is her refusal to pay her solicitors that has caused the present proceedings. And so far as appears, there is no justification for that refusal.

MASTER IN CHAMBERS.

MAY 13TH, 1913.

ANTISEPTIC BEDDING CO. v. GUROFSKY.

4 O. W. N. 1309.

Evidence—Foreign Commission—Necessity of Evidence—Principles of Granting—Terms.

MASTER-IN-CHAMBERS granted defendant an order for four foreign commissioners to take evidence where he had not been in default and the evidence sought was necessary for his defence.

Ferguson v. Millican, 11 O. L. R. 35, referred to.

Motion by defendant for a commission to Liverpool, England—to Winnipeg—and to two places in the United States to take evidence of the proper officers of the companies who issued the policies in question in this action in the question of payment.

C. A. Moss, for defendant.

F. Arnoldi, K.C., for plaintiff.

CARTWRIGHT, K.C., MASTER:—After the disposition of the previous motion in this case reported in 24 O. W. R. 493,