

CARTWRIGHT, MASTER.

MARCH 16TH, 1905.

CHAMBERS.

## MACLEAN v. JAMES BAY R. W. CO.

*Discovery—Examination of Plaintiff—Absence of Plaintiff from Province—Right to Have Examination at Plaintiff's Place of Residence—Offer to Submit to Examination abroad—Stay of Proceedings till Plaintiff's Return.*

Motion by defendants to stay the action until certain proceedings under the Railway Act to ascertain the amount of compensation to which plaintiff is entitled, have been concluded, or until plaintiff attend for examination for discovery.

R. B. Henderson, for defendants.

J. P. Mabee, K.C., for plaintiff.

THE MASTER.—At the argument I was of opinion that the motion could not succeed on the first ground.

This is not like the case of *City of Toronto v. Canadian Pacific R. W. Co.*, 18 P. R. 374; that was decided on the ground that the whole matter in controversy was being dealt with in another proceeding in the High Court.

Here it is alleged by plaintiff that defendants have committed wrongs which cannot be taken into account in the arbitration proceedings. I did not understand that this was seriously disputed. It was suggested by Mr. Henderson that by consent this question could be referred to the arbitrators, but counsel for plaintiff would not, in the absence of any instructions, accede to this suggestion.

If plaintiff has sustained damage by the acts of defendants before the initiation of proceedings for expropriation, I do not see how the Court can interfere to prevent her from taking such action as she may be advised.

The plaintiff is now and has been for some time in England. This was well known to defendants. On 3rd March instant defendants' solicitors served a notice for the examination of plaintiff for discovery under Rule 447, requiring her to attend in Toronto on 11th March instant, and paid conduct money. No objection seems to have been made that this sum was too little.

Plaintiff's solicitor and her husband both depose that plaintiff is wholly ignorant of the matters in question, and they tender the husband for examination, and agree to be bound by his evidence as fully as plaintiff would be by her own.