

MASTER IN CHAMBERS.

APRIL 15TH, 1913.

## McPHERSON v. U. S. FIDELITY CO.

4 O. W. N. 1140.

*Judgment—Speedy Judgment—Action on Bond—Con. Rule 603 —  
Good Defence on Merits Alleged.*

MASTER-IN-CHAMBERS refused to make an order for judgment under Con. Rule 603 in an action upon a bond given as security in an interpleader issue where a good defence upon the merits was alleged.

*Smyth v. Bandel*, 23 O. W. R. 798, followed.

Motion by plaintiff for judgment under Con. Rule 603, in an action on a bond given as security in the interpleader issue lately decided by the Judicial Committee of the Privy Council and reported in the current volume of the reports at p. 149.

W. Laidlaw, K.C., for the plaintiff.

G. H. Kilmer, K.C., for the defendants.

CARTWRIGHT, K.C., MASTER:—As appears in the affidavit filed in answer and the exhibits thereto there are two main defences suggested to this action. The first goes to the whole matter, and in an attempt to shew that the ground of the plaintiff's claim was destroyed by certain dealings of his with the matter out of which all the subsequent proceedings arose—(see paragraphs 12 and 13 of affidavit).

The other submission is that even if this defence fails, the plaintiff is not entitled under the true construction of the final judgment to the full amount of the bond, but at most, to less than one-half, and that in any case the amount due has not been ascertained by legal direction. The application of Con. Rule 603, comes up from time to time—but the decisions tend rather to restrict than to enlarge its application.

The last case is one of *Smyth v. Bandel*, 23 O. W. R. 798, where the cases are cited—cases as will be seen of the very highest authority. The decision above cited was affirmed on appeal by Middleton, J., on 20th December last.

In *Cod v. Delap* 92 L. T. N. S. 510, cited and followed by the Court of Appeal here in *Jacobs v. Beaver*, 17 O. L. R. 496, at p. 501, it was said by Halsbury, L.C.: "There is an