THE MASTER.—It is to be borne in mind that the order of interpleader is not in any sense a matter of right. The granting of such an order is always in the discretion of the Court. That it is not in every case of conflicting claims that the order will be granted, is shewn by such cases as Farr v. Ward, 2 M. & W. 884; James v. Pritchard, 7 M. & W. 216; Randall v. Lithgow, 12 Q. B. D. 525. Now, in this case has not Mr. Kipp been the cause of his own difficulty? At present the estate of Mrs. Wilcox is without any personal representative. It was open to Mr. Kipp to have proceeded with his application for probate. So far there has been no suggestion of any opposition to the issuing of the letters probate. Once they were issued he would have been entitled to have retained all the assets of the testatrix in his hands, and these would have given him ample indemnity for any costs occasioned in resisting the claims of either Mae Smith or E. L. Moore, while he would have been enabled to settle with claims of the creditors, which are not very large. . . . Six months have gone since the death of Mrs. Wilcox, yet the applicant has neither taken out probate, nor renounced so that some one else could do so. The motion for an order of interpleader should always be made promptly. But in this case there is unexplained delay. . . . At the beginning of November Kipp was notified of the terms of the trust deed. The applicant was then in possession of all the knowledge he has now; and for this reason, if for no other, the order should be refused, even if he were otherwise entitled to this relief. I refer to Flynn v. Cooney, 18 P. R. at p. 325.

On a consideration of the undisputed facts, I am of opinion that the motion fails, and must be dismissed with costs. It was entirely unnecessary, and can only have been made under a misconception. The applicant's duty was to have taken out probate, and more promptly than ever on learning of the claim of Mae Smith. He could then have obtained a judgment for administration under Rule 950, and in the Master's office all the conflicting claims would have been investigated and the rights of all parties adjusted, with full protection to himself.

---

CARTWRIGHT, MASTER. APRIL 30TH, 1903.

CHAMBERS.

## CAYLEY v. GRAHAM.

*Judgment—Default—Application to Set aside—Delay — Discovery of Defence after Three Years—Condition of being allowed to Defend —Payment into Court—Invalidity of Proposed Defence.*

Motion by defendant to set aside a judgment entered