seems to be misapprehended. The whole reasoning of the M. R. therein proceeded upon the fact that that was an *ex parte* order; and all he meant by saying that a person not a party to the record needed *special leave* and a *special order* before he could apply to get scandalous matter expunged, was that the application and order could not be made and obtained *ex parte*. (4) As to whether the application should be made on motion or petition, the learned V. C. said: "There is no very definite principle by which to determine when the proceeding should be by petition and when by motion. It is said the only approximation to a rule is that a motion is proper when the issue tendered is simple, though it may involve a great mass of evidence; and a petition is the proper course when several distinct issues are tendered, though each may require very little evidence to support it: Drew Eq. Pl., 93. And under the present practice many matters are brought up on motion that formerly required a petition, or may be applied for indifferently in either way." He referred, in illustration, to *Harris* v. *Meyers*, 1 Chy. Ch., 262, and *Jones* v. *Roberts*, 12 Sim. 189, and then continued: "In the present case the issue is a simple one, scandal or no scandal, and I see no reason why the application may not be made on motion. There are no new facts to be introduced into the cause, it is only sought to determine if statements in an affidavit imputing improper conduct to a solicitor, for which there is no adequate remedy if improperly introduced and allowed to remain on the files of the Court, a standing and continuous slander—are to be allowed to remain on the files." (5) As to whether the motion could properly be made against the clerk who swore the affidavit, the learned Vice-Chancellor, after remarking that *Ex parte Kirby*, Mont. 68, which was the precedent the motion followed in this respect, did not dispose of the point, said: "I have not been furnished with any case in which the order has been made against the clerk, and, perhaps, it is premature to discuss the question until it is ascertained that the affidavit is scandalous. I may say, however, that if no precedent is to be found, I am prepared to make one, and I think that the application, under the circumstances of this case, may properly be made against an offending witness as well as an offending party. See Story Eq. Pl., sec. 881, a. I therefore reverse the order of the Referee, with costs, and direct him to hear the application of the plaintiff and his solicitor."

*Appeal allowed.**

SIMON v. LA BANQUE NATIONALE.

Security for costs—Application to have amount increased—G. O. 421.

Where an order for a certain sum, as security for costs, had been obtained, and the cause coming on, the hearing was postponed. *Held*, on appeal, that then, if ever, was the time to apply for further security—*i. e.* as one of the terms of allowing the postponement.

[Mr. Stephens—Blake, V.C.

In this suit the defendants had already obtained an order for $400 as security for costs, and when the cause came on for examination and hearing, the hearing had been postponed, but no application had at that time been made for further security.

Snelling now moved for an order that plaintiff should give further security. He cited *Imperial Bank of China* v. *Bank of Hindostan*, L. R. 1 Chy. App. 437; *Western of Canada Oil Company* v. *Walker*, L. R. 10 Chy. App. 628; *Republic of Costa Rica* v. *Erlanger*, L. R. 3 Chy. Div. 62.

Cassels, contra, referred to G. O. 321 The defendants had themselves taken out the order with the amount settled at $400, and no leave to apply to have the amount increased was reserved. There was no special order in this country to help defendants as in *Costa Rica* v. *Erlanger*. He also cited *Ganson* v. *Finch*, 3 Ch. 296.

Snelling, in reply: It is not necessary to ge rid of first order before applying. Defendant could not know before answer that the costs would be so heavy.

The REFEREE—I do not think the defend-

* This matter was afterwards heard before the Referee on the merits and an order was made, expunging a large portion of the affidavit for scandal- -containing, as it did, personal matter not relevant to the matter in issue.—Rep.