

BOYLE v. McCABE—MASTER IN CHAMBERS—MAY 31.

*Security for Costs—Defendant out of Jurisdiction—Real Actor—Procedure under Land Titles Act Analogous to that under Quieting Titles Act.]—*Motion by the defendant for security for costs. The defendant filed an application for her first registration as owner of land in Toronto. By direction of the Master of Titles notice was given to the plaintiff, who claims to be a brother of the defendant, and as such entitled to an interest in the land. Judgment: "The Master of Titles has found that the plaintiff is entitled to a one-sixth share, assuming that he can prove his relationship to the defendant. As the plaintiff has been for many years, and still is a resident of San Francisco, it will be necessary that a commission be issued to take evidence there on this point. It appears to be admitted that two actions brought by this plaintiff against the defendant in respect of his claim to share in this, which he alleges to have been his father's estate, have both been dismissed for default in giving security for costs. The motion is based on this latter ground, as bringing the case within Con. Rule 1198 (d), and also on the usual practice in this respect when either party to an interpleader issue resides out of the jurisdiction. In my opinion this case is not distinguishable in principle from Ward v. Benson, 2 O.L.R. 366. Here the defendant in the issue is nevertheless the real actor in the proceeding under the Land Titles Act. It is merely her interest and desire to have the pending application made by her to the Master of Titles disposed of. The only result of granting this motion for security would be to tie the matter up until after vacation. The procedure under the Land Titles Act seems more analogous to that for Quieting Titles than to an interpleader issue. In that view the decision of Spragge, V.-C., in Shepherd v. Hayball, 13 Grant 681, seems very much in point. If the plaintiff succeeds in proving his relationship, the defendant will be able to get the costs of the two abortive actions. But at present I think the motion cannot succeed, and must be dismissed with costs to the plaintiff, to be set off against the costs due by him on the former proceedings." R. G. Smyth, for the defendant. C. Kappeler, for the plaintiff.