

COLVILLE v. SMALL—MIDDLETON, J., IN CHAMBERS—MAY 27.

Writ of Summons—Substitutional Service.]—Motion by the defendant Small to set aside an order for substitutional service of the writ of summons. Held, that on the original material the order was improperly granted. The rule of practice laid down by the late Mr. Dalton, Master in Chambers, should not be departed from. He invariably held that no order for substitutional service should be made when it is said that the defendant is evading service, unless the writ has been placed in the hands of the sheriff to be served. The material as it now stands on this motion shews that the plaintiff could not with reasonable endeavour effect prompt personal service, and the motion should be refused, but the costs should be costs in the cause. The defendant to have two days to answer to the writ. J. L. Counsell, for the applicant. W. M. McClemon, for the plaintiff.

COLONIAL DEVELOPMENT SYNDICATE v. MITCHELL—LATCHFORD, J.—MAY 30.

Contract—Acquisition of Mining Lands—Agency or Partnership—Action to Compel Conveyance—Assignment—Account of Profits.]—Action by a corporation registered in England under the Imperial Companies Act, and licensed in December, 1908, to do business in Ontario, against William Stewart Mitchell, James Stewart Mitchell, and John Archibald Mitchell, to compel the defendants to transfer to the plaintiffs certain mining locations in the district of Nipissing. The plaintiffs alleged that W. S. Mitchell received from a firm of London brokers, Rose Van Cutsem & Co., over \$100,000 to be expended by him on their account in acquiring lands and mining rights in the Cobalt district for them and the plaintiffs; that he paid out large sums for properties, taking conveyances in his own name and in the names of his co-defendants and others in trust for him; and that he and they now refuse to convey the properties to the plaintiffs, who have obtained an assignment of the interest of Rose Van Cutsem & Co. LATCHFORD, J., in an elaborate opinion, sets out the facts and his findings thereon, concluding: The defendant W. S. Mitchell was, I think, quite willing to convey to the plaintiffs or any other firm or corporation nominated by Rose Van Cutsem & Co., if that firm