TUCKER v. BANK OF OTTAWA—MASTER IN CHAMBERS—APRIL 5.

Security for Costs—Action for Benefit of Plaintiff's Creditors—Assignment for Benefit of Creditors—10 Edw. VII. ch. 64, secs. 8, 9, 14 (O.)—Interest of Assignor—Con. Rule 440—Assignee Acting as Solicitor.]—Motion by the defendants to stay the plaintiff's action, or for security for costs, on the ground that the action was in reality for the benefit of the plaintiff's creditors. It was admitted that the plaintiff, on the 21st March, 1911, made an assignment for the benefit of his creditors, under R.S.O. 1897 ch. 124, of all his estate, real and personal. Any surplus after payment of debts and charges was to be repaid to the assignor. The affidavit of the defendants' solicitor was the only material filed in support of the motion. In it he stated that he had made careful inquiries and believed that the plaintiff had never obtained any release or discharge from his creditors, and that he was insolvent and without means or assets exigible under execution, and that up to the present time his creditors had only been paid a dividend of eleven cents on the dollar. This was answered by an affidavit of the plaintiff's solicitor, apparently the same person as the assignee under the assignment above-mentioned. He confined himself to a denial of the plaintiff's insolvency, and said that the plaintiff was carrying on his business of buying and selling live stock, and was able and willing to advance to the deponent the sum he asked as a deposit before commencing this action. He made the affidavit because the plaintiff was quarantined for small-pox, and was out of communication with his solicitor. The Master referred to Pritchard v. Pattison, 1 O.L.R. 37, where it was said that very clear proof must be given that the plaintiff has no substantial interest in the action before such an order can be made; and to Stow v. Currie, 14 O.W.R. 61, and cases cited there. Giving the widest scope possible to the effect of the assignment, as set out in 10 Edw. VII. ch. 64, secs. 8, 9, and 14 (O.), it was by no means clear that the plaintiff had no substantial interest. The contrary would seem to be the fact. In any case, that was a matter that could not be decided on the present material. It was clearly for the benefit of the plaintiff that he should recover anything possible, and so reduce or extinguish the claims against him. For all that appeared these claims might have now been paid or released or barred by the Statute of Limitations. The necessary inquiry to determine these questions would be foreign to such an application as the present. In any case, the motion must fail, under the principle of the decisions under Con. Rule 440. In the last of these, Garland v. Clarkson, 9 O.L.R. 281, a