REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

CHANCERY DIVISION.

MASTER'S OFFICE. — COUNTY OF ONTARIO.

ENGLISH v. GLEN.

Postponement of sale—Application for—Practice.

An application to postpone a sale must be made promptly and on notice, and such application must be made to the Court or a Judge, and not to the Master who settled the advertisements.

[Whitby.—DARTNELL, J.J.

The solicitor for the owner of the equity of redemption, two days before the day appointed for sale, applied to the Master at Whitby for a postponement. No affidavits were filed, but the vendor's solicitor appeared and did not object; but the solicitors for a mesne incumbnancer strongly objected.

THE MASTER AT WHITBY.—I do not think I have any authority to grant this application. I think it should be made to a Judge in Chambers, and should have been made on notice promptly, aud on affidavits or papers previously filed. A very weighty case indeed must be made for postponement. The policy of the Court is to give every confidence to intending purchasers at a sale conducted under its auspices. In this case it is alleged that it is probable that bidders, or parties interested, living in the United States will be present, and it would be impossible, in the time, for any notification to reach them, much less the general public. The vendors, after opening the sale, might postpone it for sufficient reasons; for example, should there be no bidders, but (particularly where a mesne creditor objects) a vendor's solicitor should be cautious in withdrawing the property from sale. He is an officer of the Court, amenable to its discipline, and, to a certain extent, is a trustee and guardian, not only of the plaintiff's interests, but those of other parties to the suit. On both grounds I decline to direct any postponement, and the sale must go on.

RECENT ENGLISH PRACTICE CASES.

D'HORMUS-GEE & CO. v. GREY.

Imp. O. 16, r. 1—Ont. Rule 89—Security for costs—Joint and separate claim.

[L. R. 10 Q. B. D. 13.

The above rule makes no alteration in the practice as regards security for costs, so as to alter the law, as it existed before the Judicature Acts, that where one of two joint plaintiffs is a foreigner out of the jurisdiction, yet if the other resides within the jurisdiction there can be no order for security for costs.

Per MANISTY, J., *Umfreville* v. *Jackson*, L. R. 10 Ch. 580, seems precisely in point.

[NOTE.—*The Imperial and Ontario rules are virtually identical.*]

RE EAGER, EAGER v. JOHNSTONE.

Imp. O. 11, r. 1—Ont. rule 45—Service of writ out of jurisdiction.

[L. R. 22 Ch. D. 86.

No leave to serve a defendant out of the jurisdiction can be given except in the cases specified in the above rule.

Per JESSEL, M.R., "The new rule is exhaustive; the old practice is no longer applicable. This case is admitted not to be within the rule, therefore we cannot order service."

[NOTE.—*The Imperial and Ontario rules are virtually identical.*]

EATON v. STORER.

Imp. O. 24, r. 1, O. 57, r. 6—Ont. rules 173, 462—Leave to deliver reply after time.

[L. R. 2 Ch. D. 91.

The time for delivering a reply, which would have expired on July 25th, was extended to August 22nd, and then to September 19th. On September 26th no reply having been delivered the defendant served notice of motion for judgment. On the same day the plaintiff, by leave of the judge, served notice of motion for the following day for leave to deliver a reply, and on the 27th the judge refused the plaintiff's motion on the ground of unexplained delay.

Held, on appeal, the application ought to have been granted on the terms of the plaintiff's paying the costs of it.