

defendants stated, on affidavit of their officer, their inability to plead without particulars. The plaintiff asked to have discovery before giving particulars. The Master referred to *Turquand v. Fearon*, 48 L. J. Q. B. 703, 40 L. T. R. 543; *Townsend v. Northern Crown Bank*, 19 O. L. R. 480; *Odgers on Pleading*, 5th ed., p. 178; and said that there did not seem to be any necessity for particulars of the 4th paragraph now; they could be had on discovery; but particulars of the 3rd paragraph should be given in a week, with an extension of time for delivery of statement of defence until eight days after particulars delivered. Costs in the cause. F. R. MacKelcan, for the defendants. J. D. Falconbridge, for the plaintiff.

DAVIS v. WINN—MIDDLETON, J., IN CHAMBERS—SEPT. 26.

*Costs—Summary Disposition—Master in Chambers—Jurisdiction—Consent of Parties—Appeal—Con. Rule 616—Incidence of Costs.*]—Appeal by the defendant from an order of the Master in Chambers requiring her to pay the costs of the action. The motion before the Master was for summary judgment under Con. Rule 616, but it was dealt with as a motion to determine the incidence of the costs of the action—it being said that the further prosecution of the action for any other purpose was rendered unnecessary by reason of the execution of certain conveyances. The learned Judge said that there was much room for doubt whether the Master in Chambers has jurisdiction to deal with a motion under Con. Rule 616, which amounts to the hearing and determining of the cause. Admissions may be made in pleadings and on examinations which raise matters of the greatest importance and difficulty, and the parties are entitled to have the case disposed of before a forum from which there is an unfettered right of appeal. The Master was, therefore, right in dealing with the motion as one to determine costs only, and the parties so treated it, and, if the defendant's consent was necessary, his solicitor's letter of the 25th August was a sufficient consent. The learned Judge, however, did not, upon the facts, agree with the Master's disposition of the costs. The plaintiff should certainly not receive costs, and perhaps should pay costs; but, on the whole, it would be better to leave the parties each to pay his and her own costs. The appeal is allowed, and, in lieu of the Master's order, it is ordered that, it being admitted that there is no question for adjudication between the parties except that of costs, the action is forever stayed, and it is not deemed proper to make any order concerning the costs of the action or of this appeal. W. E. Raney, K.C., for the defendant. John MacGregor, for the plaintiff.