

25th June, commenced an interpleader action, and, on the order of a Judge, paid into Court \$730.44 next day. Both defendants duly appeared or accepted service. The defendant Clemens delivered his statement of defence on 8th September. For some reason Edgar allowed the time to elapse, and the pleadings were noted as closed against him. He is applying now for leave to defend if necessary.

On 25th June Edgar commenced an action against Elgie & Co. for \$400; and on 26th June Clemens commenced an action also against Elgie & Co. for more than \$900.

Elgie & Co. set their action down for trial on the non-jury list at Toronto. The venue in the Edgar action was at Bracebridge, and that in the Clemens action at Berlin.

Elgie & Co. now moved to stay the two actions brought against them until their action should be finally disposed of.

F. Arnoldi, K.C., for Elgie & Co.

F. E. Hodgins, K.C., for Edgar.

J. E. Jones, for Clemens.

THE MASTER:—The motion was opposed on several grounds. It was said that the refusal of the interpleader order was *res judicata* as disproving any right on Elgie & Co.'s part to interplead. Even if such a ground can be taken before the Master in Chambers, it is sufficient to note the difference between the two procedures.

On moving for an interpleader order the applicant must shew clearly his right to be rid of all responsibility, and to throw the burden on the claimants. It was only decided on that motion that this right was not so established in face of the opposition of both claimants. In the present action the plaintiffs assume the whole burden of proof, and also not only have brought the money into Court, but are liable for costs to both claimants if their present action fails. It was admitted on the argument that they were perfectly responsible for costs and damages. When the matter is fully and carefully investigated at a trial, it may be held that Elgie & Co. were right after all, and that the claimants should have consented to the order asked for. Then it was said that Clemens having claimed the whole \$730.44 and more, while Edgar only claimed \$400, this shewed that interpleader could not lie. The contrary is distinctly said to be the law in the very