discovery made by the plaintiff, before filing any statement of claim, other than the plaint in the County Court from which the action was transferred.

BACON, V. C.—Whatever may be the practice of the County Courts, this Court, into which the action has been transferred, can only deal with the case according to its own practice. Courts know their own practice; they are not bound to know the practice of other Courts. The case has been transferred into this Court that justice may be administered between the parties, but this can only be according to the practice of the Court. That practice is founded on the most just and necessary reasons; and the order I am asked to make would be most oppressive. I do not yet know what are the matters in question between the parties, in respect of which I am called upon to give discovery; and until I do, I cannot accede to such an application as the present.

[NOTE.—*The section of the Imp. Act and that of the Ont. Act seem to be virtually identical.*]

CANADA REPORTS.

ONTARIO.

CHAMBERS.

(Reported by G. S. Holmested, Esq., Registrar of the Court of Chancery.)

DALE v. HALL.

Order for production—Time when plaintiff entitled to.

A plaintiff is entitled to an order for production on præcipe against any defendant whose time for putting in a statement of defence has expired, whether a statement of defence has been put in or not.

[Nov. 14, 15—PROUDFOOT J.

H. Cassels, for plaintiff, applied for a direction to the Clerk of Records and Writs to issue an order for production against the plaintiff under the following circumstances:

Plaintiff's statement of claim had been delivered, and the time for delivery of statement of defence had expired. A statement of defence had been delivered.

He stated that the Clerk of Records and Writs had, after consultation with FERGUSON, J. refused to issue the order on the ground that the pleadings were not closed. He contended that the plaintiff was not bound under Rule 222, to wait until the close of the pleadings, but was entitled to the order against each defendant as soon as the time for each defendant putting in a defence had expired, whether a defence had in fact been put in or not. This had been held to be the proper construction of Rule 222 by the Master in Chambers, in *Clarke* v. *Whiting*, on 24th October, 1881.*

Any other construction of the rule requires the introduction of words into the Rule which are not there. Either the time for putting in the statement of defence can expire when one has in fact been put in, or it cannot. To say that it cannot is manifestly absurd, and if it can, as is obviously the case, then the plaintiff is within the terms of the Rule and entitled to the order.

PROUDFOOT, J., was of opinion that the plaintiff was entitled to the order as claimed; but before disposing of the application desired to consult Ferguson, J.

Nov. 15th. 1881.

After consulting with my brother Ferguson, I am still of opinion (although he retains the opinion expressed by him) that the plaintiff is entitled to the order, and as my brother Ferguson has not given any decision in the matter which can be appealed from, I am bound to follow my own opinion. I may say that I find that there is considerable difference of opinion among the members of the High Court on this point, and it is therefore desirable that it should be without delay settled by an appeal to a Divisional Court.

* In this case *Isaac Campbell* applied on motion to set aside a statement of defence on the ground that an order for production had not been complied with.

A. Hoskin, Q. C., showed cause, contending that the order for production had been granted on præcipe, and was a nullity, as the pleadings were not closed as required by Rule 222.

It was on the other side, however, contended that the order on præcipe could be obtained as soon as defendant put in his statement of defence, and without formal pleadings.

THE MASTER held that the order was good and gave three days further time to produce on payment of costs.