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HON MR. JUSTICE MIDDLETON.

JUNE 23RD, 1913.

ANTISEPTIC BEDDING CO. v. GUROFSKI.

4 O. W. N. 1552.

*Evidence—Foreign Commission—Necessity of Evidence—Principles of Granting—Terms.*

MASTER-IN-CHAMBERS (24 O. W. R. 613; 4 O. W. N. 1309) granted defendant an order for four foreign commissions to take evidence where he had not been in default and where the evidence sought was necessary for his defence.

*Ferguson v. Millican*, 11 O. L. R. 35, referred to.

MIDDLETON, J., dismissed an appeal by plaintiff from above order, costs to defendant in any event of the cause.

*Hawes v. Gibson*, 20 O. W. R. 517; 22 O. W. R. 46, and *Re Corr*, 22 O. W. R. 537, distinguished.

Appeal by plaintiff from order of the Master-in-Chambers (24 O. W. R. 613), directing the issue of commissions at the instance of the defendant.

F. Arnoldi, K.C., for the plaintiff.

F. Aylesworth, for the defendant.

HON MR. JUSTICE MIDDLETON:—I do not think that this case possesses any of the special features calling for the imposition of terms as in *Hawes v. Gibson*, 20 O. W. R. 517; 22 O. W. R. 46; and *Re Corr*, 22 O. W. R. 537. The defendant has a right to present his case as he pleases, unless the Court is satisfied that his conduct is vexatious or *prima facie* unreasonable. I am not so satisfied in this action.

The plaintiff claims that Gurofski, its agent, is liable for the loss of goods by fire because he undertook to place and failed to place insurance; that the agent collected the premiums from the plaintiff, but, failing to pay them over, the policies were cancelled. What the defendant seeks to estab-