

[Cham.]

NOTES OF CASES.

[Cham.]

Mr. Dalton.]

[Dec. 2.]

RE DUNSFORD.—DUNSFORD v. DUNSFORD.

*Examination — Witness — Master's office — Chambers, Rule 285 O. J. A.*

The usual administration decree had been made in the suit, and the defendants had filed their accounts in the office of the Master in Ordinary, but nothing further had been done.

The plaintiff's solicitors, learning that a witness whose evidence was said to be material, was about to leave the country, applied to and obtained *ex parte* from the Master in Chambers an order to examine this witness before a special examiner in Toronto, at which place he expected to stay a few days before leaving the country.

The defendant's solicitors were given the usual notice of the order and appointment to examine.

On a motion to discharge the order and set aside the appointment on the grounds that :

1. The Master in Chambers had no jurisdiction to grant an order to examine a witness whose evidence is required in the office of the Master in Ordinary, as the control of the latter over proceedings in his office is complete. G. O., (Chy.) 217-221-222, *Cottle v. Vansittart* 2 Chy. Cham. 396, *Hilderbroom v. McDonald*, 8 Pr. R. 389.

2. There was no issue upon which the evidence could be given, and the nature of what the evidence was to be was not disclosed.

3. The order should not have been made *ex parte*.

*Held*, that under Rule 285 O. J. A., the Master in Chambers has full power to direct evidence to be taken at any time and at any stage of the proceedings in a cause.

*H. Cassels*, for the motion, (the defendant.)

*W. Read*, contra.

Court suit had been stayed by the defendant pending the appeal. The defendants solicitors in answer to a demand for the costs and a threat of execution, guaranteed them payment if the plaintiff's solicitor would guarantee their return in case of a reversal of the order. Execution was issued without further notice, and was set aside by the Master in Chambers.

*Held*, on appeal reversing his order, that the parties had been placed at arms length by the conditional offer of the defendant's solicitor to pay the costs, and in strictness the execution was regularly issued.

Mr. Dalton.]

[December.]

SACKVILLE v. PACEY.

*Counterclaim—Hypothetical case.*

*Held*, that a defendant is not entitled to set up in his counterclaim a hypothetical case for relief against a third party.

Mr. Dalton.]

[December.]

BYRNE v. BOX.

*Division Court bailiff—Interpleader—Costs.*

The defendant, a Division Court bailiff, seized goods of the plaintiff under two writs. H. & Co. claimed the books and book debts under an assignment from plaintiff. Debtor applied for an interpleader order, or that H. & Co., be made parties.

*Held*, that as upon the facts appearing the defendant was not liable, and the plaintiff must fail in the action, the proceedings should be set aside under R.S.O. cap. 73 sec. 8 and Rule 323.

*Held*, also, that there was no jurisdiction to provide for H. & Co.'s costs.

Osler, J.]

[December.]

PARKHILL v. MCLEOD.

*Costs—Guarantee by Solicitor—Execution.*

The plaintiff had an order for costs against the defendant, which the defendant's solicitor guaranteed payment of. Taxation was delayed pending an intended appeal from the order. This guarantee was not accepted. There was some delay after the taxation. A Division