

THE
ONTARIO WEEKLY REPORTER.

(To and Including June 27th, 1903)

VOL. II.

TORONTO, JULY 2, 1903.

No. 25

CARTWRIGHT, MASTER.

JUNE 22ND, 1903.

CHAMBERS.

McGREGOR v. JOHNSON.

Foreign Commission—Evidence of Important Witness—Grounds for Ordering Commission—Terms—Security for Costs.

Motion by plaintiffs for order for commission to take evidence of Myron R. Johnson at Waupaca, Wisconsin.

W. J. Elliott, for plaintiffs.

R. U. McPherson, for defendants, shewed cause and objected: (1) that the affidavits filed in support of the motion were not sufficient under the cases; (2) that it was not shewn that any attempts had been made to procure the attendance of the witness; (3) that the witness would be at the trial on defendants' behalf, as stated in the affidavit of their solicitor.

THE MASTER.—I consider that the 3rd objection disposes of the first. In addition to this is the fact that in the statement of claim it is alleged that the execution of the will in question in the action "was obtained by the undue influence of one Myron R. Johnson, the son of the defendant Isabella Johnson." . . . It may fairly be inferred that the witness was certainly present at the time of the execution and preparation of the will sought to be set aside.

The relationship of the witness to the principal defendant is a sufficient answer to the second objection.

The third objection cannot prevail. It was stated at the argument that the witness was in delicate health, and had spent the winter in California on that account. No trial can take place until the autumn. The plaintiffs should not be obliged to take the risk of this witness being able to be present at that time. . . . The statement of claim is based upon the alleged undue influence of this witness. If on his examination the fact is not established, the action may probably be dropped; while if his evidence appears to