

was specially endorsed. MIDDLETON, J., said that the writ was properly endorsed in accordance with the Rules; and the only remedy sought against Kemp was foreclosure. He was in equity the owner of the equity of redemption, and undoubtedly a necessary and proper defendant, and properly made a defendant in the first instance; for the parties to be added in the Master's office are subsequent incumbrancers. As there are subsequent incumbrancers, there will have to be a reference; and the defendants the Shers having appeared and disputed the amount of the plaintiff's claim, there must be a reference. If Kemp desires to raise any issue, he ought to file an affidavit disclosing what that issue is. Apart from this, no jurisdiction is conferred upon the Master to dispense with an affidavit where the writ is specially endorsed. If the writ is irregular, it may be set aside; but where, as here, it is proper, it must be obeyed, or the consequences pointed out in the Rules will follow. Appeal allowed, with costs here and below to be paid by the defendant Kemp to the plaintiff in any event of the cause. The defendant Kemp may have 5 days further in which to enter an appearance, filing an affidavit shewing his defence, if he so desires. Any appearance entered under the Master's order must be vacated. G. T. Walsh, for the plaintiff. J. Singer, for the defendant Kemp.

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REX V. RISPA—MIDDLETON, J., IN CHAMBERS.—SEPT. 28.

*Evidence—Foreign Commission—Criminal Cause.*]—Motion by the accused for the issue of a commission to take the evidence of certain witnesses said to be at Hoboken, New Jersey, who, it was said, would not attend in Canada for the purpose of giving evidence. MIDDLETON, J., said that the charge against the accused was serious. His defence was an alibi. It was most unsatisfactory that evidence on an issue of this kind should be given on commission; but to deprive the accused of the commission might prevent his being able to obtain the evidence at all; and nothing could be worse than to have it supposed that there was in New Jersey evidence which might support the defence of the accused, and that he had been denied the opportunity of placing it before the Court. It was better to make the order sought, leaving it to the Crown counsel and the Judge at the trial to comment as might appear desirable upon the evidence given on the commission. J. M. Ferguson for the accused. J. R. Cartwright, K.C., for the Crown.