service was therefore as good on the principal in York as it would have been in his own county of Wentworth. As to the notice to plead, ten days is only required when the agent is served.

Davidson contra.

Mr. Dalton thought that the service was good under the section of the C. L. P. Act cited in its support, and that the eight days' notice was sufficient. The summons was accordingly discharged with costs.

CHANCERY CHAMBERS.

McAvilla v. McAvilla.

Motion to commit for disobedience of order—Con. Gen. Order, 293.

A motion to commit defendant, or to take the bill *pro confesso* for non-attendance of defendant for examination, pursuant to a special order, was refused where the order had not been previously served.

[January 15, 1876—Referee.]

By an order of the Court, dated the 29th day of September, 1875, it was ordered that the defendant should personally appear within one month before the Master at Belleville, for the purpose of being cross-examined on his answer in this cause by the plaintiff, at such time and place as the Master should appoint, eight days notice thereof to be given to the defendant's solicitors; and that the said defendant, upon then and there being paid his proper conduct money, should submit to such cross-examination.

The plaintiff obtained an appointment from the Master on the 18th Oct., 1875, appointing the 29th Oct., at 3 p.m., for the examination to take place. This appointment was served on the defendant's solicitor on the 18th Oct., 1875. The defendant did not attend at the time and place appointed, although he seemed to have known of the appointment, and called at the office of the plaintiff's solicitor shortly before the hour appointed for the examination to take place.

The plaintiff's solicitor then obtained said appointment on the 1st Nov., appointing the 10th for the examination, which appointment was served on the defendant's solicitor on the 1st Nov. On the return of this appointment his solicitor appeared, but the defendant himself did not attend. On the 16th Nov. the defendant's solicitor waited upon the plaintiff's solicitors, and informed them that he had received a telegram from the defendant, agreeing to attend and be examined on the 17th Nov., and requesting that an appointment might be obtained for that day. It so happened, however, that the Master was unable to give any appointment for that day, and therefore the defendant's solicitors concurred in the 22nd Nov. being appointed for the examination.

On the morning of the 17th Nov. the defendant came to Belleville and offered to submit to examination; but he was told that the examination could not be taken that day, and the plaintiff's solicitor then went with the defendant to the Master's office, when the Master showed him the appointment made in his book for taking his examination on the 22nd, and the plaintiff's solicitor, moreover, notified him verbally that if he failed to attend he would move to take his answer off the files and to note the bill *pro confesso* against him, or move to commit him for contempt.

Nothwithstanding this, defendant did not attend at the appointed time, but went off to the shanties, some fifty miles north of Peterboro', where it would be very difficult to reach him, and from whence he was not likely to return until the spring.

F. Arnoldi for the plaintiff, now applied to commit the defendant for contempt, in disobeying the order of 28th Sept., 1875, or to take the answer of the defendant off the files, and to take the bill *pro confesso* against him, or for such other order as the Court might think fit.

W. G. Cassels for defendant.

Mr. Holmested—Whatever may have been the intention of the Court or the parties, the order of the 29th of September does not in terms dispense with the service of that order upon the defendant, endorsed with the usual notice required by Order 293. Neither does the order itself conform to the provisions of that order. And the order, in point of fact, was not served upon the defendant, or even upon his solicitor, at any time before the alleged default was made. This, I think, is fatal to the success of this application. (See *Wagner* v. *Mason*, 6 Prac. R. 187, and the cases of *Rider* v. *Kidder*, 12 Ves. 202, and *De Manneville* v. *De Manneville*, ib. 203, Daniells, Pr. 5th Ed., p. 903-5, and *Adkins* v. *Bliss*, 2 De. G. & J. 286).

It is not possible for me to, nor do I think the defendant's solicitors could dispense with the provisions of General Order 293; and the omission to serve the order, therefore, is a matter which I do not think they could be deemed to have waived. The object of Order 293 is to