

WEATHERBE, J. }
In Chambers. }

[Nov. 29, 1895.]

OCHTERLONEY v. PALGRAVE GOLD MINING CO.

Foreclosure action—Set-off—Particulars.

By way of counter-claim to a foreclosure action, defendants set up certain legal expenses alleged to have been incurred by them in defending previous suits which arose out of a disputed title to certain personal property conveyed to defendants by plaintiff's testator. Plaintiff had previously moved to strike out the said defence as false, but failed on that application.

On motion for particulars of the alleged suits and legal expenses,

Held, that as defendant's affidavits filed on the previous motion fully disclosed all the requisite facts, no order for particulars could be granted.

Harris, Q.C., for plaintiff.

Kenny for defendant.

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[Dec. 10, 1895.]

MCLEAN v. MCKINNON.

Capias—Sufficiency of affidavit for arrest—Proof of claim.

Upon application to discharge an order for arrest of defendant in an action for damages for assault and battery, defendant swore that he had no intention of leaving the Province. As adequate grounds of belief to the contrary, plaintiff showed that defendant had made such statements as the following: "That he had no property and that it was easy for him to abscond," "that he was free to leave the country," etc.

Held, that the above expressions contained no necessary implication of an intention to abscond and that the order for arrest must be discharged.

Held also, that O. 44. r. 1, J.A., does not require that the affidavit for arrest should prove the amount of damage suffered by plaintiff. It is enough that such affidavit disclose facts which would enable a judge to decide that plaintiff had suffered sufficient damage to bring his claim within the jurisdiction of the court.

Mellish for defendant.

Fulton for plaintiff.

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[Dec. 13, 1895.]

POILEY v. TANNER.

Security for costs—Counter-claim arising out of subject matter of claim.

Plaintiff residing out of the jurisdiction sued for goods bargained and sold, and defendant, while admitting the receipt of a large portion of the goods, counter-claimed for damages for non-delivery of the remainder.

On motion of defendant for security for costs.

Held (following *Winterfield v. Bradnum*, 3 Q.B.D. 324), that for such purposes as the present a distinction must be drawn between a counter-claim pure and simple and one arising out of the self-same transaction out of which the plaintiff's cause of action grew; that while security for costs could not properly be granted in the former case, it could properly be granted in the latter; that as defendant's counter-claim fell within the latter class, he was entitled to the usual order for security.

J. A. Chisholm for defendant.

Cahan for plaintiff.