

Frank Denton, K.C., for defendants.

R. S. Neville, for plaintiff.

THE MASTER IN CHAMBERS:—The demand was served under and by virtue of Rule 144, on the 10th February inst. No answer was made to that demand until the 14th inst., when the plaintiff's solicitor gave the information to defendants' solicitor in the office of a special examiner; at the same hour the plaintiff's solicitor was served with notice of motion for the order herein, such service being made at his office.

Counsel for defendants asked on the return that no order other than that the costs of the application be costs in the clause, be made.

Counsel for plaintiff objected and asked that the costs of the application be paid by the defendants to the plaintiff, on the ground that Rule 144 does not apply where there is only one party plaintiff.

It is quite true that if the style of the cause only shewed one party as plaintiff, then not only the motion, but the demand, would not have been served under Rule 144; the procedure would have been in that case under Rule 143.

The difficulty has arisen through the plaintiffs using a firm name in bringing the action, while he is sole member of the firm. This is opposed to the provisions of Rule 222—see the able article written upon this point by Mr. Alexander MacGregor, and published in 37 C. L. J. at p. 763. The plaintiff, having been the cause of the difficulty, might very well have been asked to pay the costs occasioned by his improperly using the name of the firm instead of his own name.

The order will go as asked by defendants' counsel. No costs of plaintiff's affidavits.

R. S. Neville, Toronto, solicitor for plaintiff.

Denton, Dunn, & Boulton, Toronto, solicitors for defendants.