

cause" within the meaning of Rule 1170; for the very matters relied upon by the Judge as "good cause" had been passed upon adversely by the jury; and therefore the costs should follow the event under Rule 1172.

*Becket v. Stiles*, 5 Times L.R. 88, followed.

Per OSLER, J.A.: The English cases where the question is, whether the successful party shall be deprived of costs altogether or shall have less costs than would ordinarily follow the recovery, do not apply. The Judge has power under Rule 1172 to order for good cause that the plaintiff shall have his costs upon the scale of the court in which the action has been brought, and not upon that of the court which would have had jurisdiction to the amount of the damages actually awarded. In this case the plaintiff had reasonable ground for bringing her action in the higher court, and there was, therefore, good cause for making the order.

Under the circumstances of the case, the appeal was allowed without costs; but

Per BURTON, J.A.: The only reason for withholding costs from the successful appellant was that the case was the first one that had come before the court upon the new rule, about which there had been much difference of opinion.

*J. B. Clarke*, Q.C., for the appellant.

*Wm. Kingston*, Q.C., for the respondent.

BOYD, C.]

[Jan. 13.

GILMOUR v. MAGEE.

*Writ of summons—Renewal of—Leave to serve renewed writ—Rules 238, 442—Forms 92, 124—Grounds for renewal—Discretion—Jurisdiction of local judge.*

A writ of summons cannot be renewed without a Judge's order, and to satisfy the terms of Rule 238 leave to serve the writ after the lapse of a year should also be obtained.

But where an order for renewal was obtained and the writ renewed pursuant thereto, and served without any order for leave to serve, it was dealt with under Rule 442 and the service confirmed. Inconsistency in Rule 238 and Forms Nos. 92 and 124 pointed out. Where the delay in serving the writ arose from the pendency of an appeal in an action between the same parties, the decision of which would affect the plaintiff's course, and service was not made till that appeal was decided,

*Held*, that a local Judge's discretion in ex-

tending the time for service should not be interfered with.

A local Judge has jurisdiction under Rule 238.

*St. Louis v. O'Callaghan*, 13 P.R. 322, followed.

*D. Armour* for the plaintiff.

*Middleton* for the defendant.

BOYD, C.]

[Jan. 14.

FLETT v. WAY.

*Order—Power of Judge or Master-in-Chambers to rescind—Ex parte order—Order made after notice upon default—Rule 536.*

A Judge or the Master-in-Chambers has power to reconsider a matter which has been brought before him *ex parte*, on the application of an opposing party; and he can also open up a matter in respect of which an order has been made after notice and upon default to show cause, if he is satisfied that opposition was intended and that any injustice has arisen.

*Semble*, that if necessary the words "*ex parte* order" in Rule 536 may be read so as to cover cases going by default, where through some slip cause has not been shown.

*Titus* for the plaintiff.

*J. M. Clark* for the defendant.

Chy. Div'l Ct.]

[Jan. 19.

DUFFY v. DONOVAN.

*Security for costs—Plaintiff out of jurisdiction—Defendants possessed of plaintiff's funds—Joint trustees—Discretion of court—Appeal—Acquiescence—Waiver.*

In cases where the defendants are possessed of funds belonging to the plaintiff, the discretion of the court will be exercised against hampering the plaintiff by ordering security for costs.

The plaintiff, who lived out of the jurisdiction and had lately attained his majority, sued the defendants for an account and payment of funds which he alleged they held as joint trustees for him, he having had no account. The receipt of trust funds by both defendants was proved, but one defendant put the blame of their not being forthcoming on the other, and swore that he had a good defence to the action, though he did not disclose it. The other defendant did not defend.

*Held*, not a case in which the plaintiff should be required to give security for costs.