CARTWRIGHT, MASTER. MARCH 9TH, 1905.

CHAMBERS.

CITY OF TORONTO v. TORONTO R. W. CO.

Master in Chambers—Jurisdiction—Motion to Set aside Appointment of Referee to Proceed with Reference—Jurisdiction of Referee Questioned—Rule 42 (2), (12)—Appeal—Prohibition.

Motion by defendants to set aside appointment issued by the senior Judge of the County Court of York, on 7th January, 1905, to proceed with a reference directed by a consent judgment pronounced on 14th January, 1903.

The reference was to "the senior Judge of the County Court of the county of York." The senior Judge was then Joseph E. McDougall, who died before entering upon the reference.

The appointment was issued by his successor, John Winchester.

J. Bicknell, K.C., for defendants, contended that the appointment was issued without jurisdiction, the reference being to the deceased Judge, and not to his successor.

J. S. Fullerton, K.C., for plaintiffs, objected that the Master had no jurisdiction to entertain the motion.

THE MASTER (after setting out the facts):—In . . . Re Glen, Fleming v. Curry, 27 A. R. 144, a certificate was obtained from the new Master that he proposed to proceed with the reference. From this an appeal was taken to a Judge in Chambers, and carried from him to a Divisional Court, and finally to the Court of Appeal.

It was argued by Mr. Bicknell that I had the jurisdiction which I had exercised in Dryden v. Smith, 17 P. R. 500, where the appointment of a special examiner was set aside. . . . There my jurisdiction was founded on irregularity, and the arguments proceeded entirely on that ground.

But by Rule 42 (2), the Master in Chambers is forbidden to hear "appeals and applications in the nature of appeals," and by sub-sec. 12, "applications for prohibition, mandamus, or injunction."

Now, the present motion seems to be really both an appeal and to involve a prohibition if successful.

The Judge of the County Court has given an appointment to proceed. He has, therefore, construed the judgment as giving him jurisdiction, and I cannot hear an appeal from his ruling. Nor, even if I were of opinion that his ruling