to such guardian as the Court might appoint, except the father of the infants, and if the Court appointed the father guardian the interest was to accumulate until the infants came of age. The infants resided with their aunt (the petitioner) and had so resided from shortly before their mother's death. Their father never claimed their custody. The guardian named in the will received the interest from the trustees till 1878, when he refused to act, and thereupon the trustees refused to pay any interest till a guardian was appointed by the Court. The aunt of the infants then applied by petition to the Court, on notice to the father, for an order declaring her entitled to be paid for past maintenance and to be appointed guardian of the infants.

The father did not appear on the application, and in his absence Proudfoot, V. C. granted the application.

*H. Cassels*, for petitioner.

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The Referee, Proudfoot, V. C. [May 17.

Morden v. Booth.

*Staying proceedings.*

The defendant Stevenson demurred for want of parties to the plaintiff's bill.

Demurrer allowed with liberty to plaintiff to amend within 14 days and on payment of costs of demurrer, and if bill not amended within the 14 days that plaintiff should pay defendant costs of suit.

The plaintiff then moved before the Referee for an order extending the time for amending bill until after the rehearing of the order made on the demurrer, and until 14 days after judgment on such rehearing, and for a stay of proceedings under the order of Blake V. C. in the meantime.

The Referee refused the application on the ground that he had no jurisdiction to stay proceedings other than those to enforce the payment of money, following *Campbell* v. *Edwards*, Prac. Rep. 159, and *Butler* v. *Standard*, 6 Prac. Rep. 41.

On appeal, Proudfoot, V. C., reversed this decision, holding that the Court has jurisdiction in any proper case to stay proceedings, and under recent legislation that power is conferred on the Referee.

*H. Cassels*, for defendant Stevenson.

*T. H. Spencer*, for plaintiff.

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# CANADA REPORTS.

## *ONTARIO.*

### IN THE COUNTY COURT OF THE COUNTY OF SIMCOE.

Currie v. L. McCallister and James Russell.

*Action against magistrate, for not returning conviction—Joint liability—Statutes affecting tabulated and discussed—Declaration—Pleading.*

[Barrie, Jan. Term, Ardagh, J. J.

This was a *qui tam* action against the defendants as Justices of the Peace, for not making a return of conviction. Defendants demurred to the declaration.

*Lount*, Q.C., for the demurrer.

*Moberly*, in support of the declaration.

The facts and other matters sufficiently appear in the judgment of

Ardagh, J. J.—The plaintiff declares in a *qui tam* action against two defendants, claiming a penalty of $80 for non-return of a conviction by them of one Peter Currie.

The defendants demur to the declaration on the following grounds :—

1. The defendants are not jointly liable.

2. The declaration is not founded on or authorised by any statute.

3. The declaration does not disclose the nature of the offence whereof the defendants convicted Peter Currie.

4. The declaration does not disclose that the defendants had jurisdiction.

5. The declaration does not allege that that the conviction was a joint conviction.

6. The declaration does not aver that the return of the said conviction was not made contrary to the statutes in that behalf.

And on the argument, Mr. Lount further objected that the declaration did not state where the conviction took place, *i. e.*, that it took place within the County of Simcoe,