

In October, 1916, the plaintiff gave notice of motion for an order to take an account of the amount received by defendant by way of royalties since the judgment, and the late Chancellor made the order asked, reserving further directions and the question of costs until after the report.

It was this order which was the subject of appeal. The majority of the Court (Riddell, Kelly, and Masten, JJ.), allowed the appeal on the ground that there was no jurisdiction to make the order, and Meredith, C.J.C.P., held that there was jurisdiction to make the order, but, in the circumstances, the order should not have been made.

It is on this point of jurisdiction that the case has to be considered. The order appealed from was attempted to be supported under Rule 65, and *Meyers v. Hamilton Provident, Etc.*, 15 P.R. 39; this case the majority of the Court held ought not to be followed. Mr. Justice Riddell refers to *Witham v. Vane*, 1884, W.N. 98, where Pearson, J., in an action refused to make a supplemental order for an account in respect of breaches of the covenant subsequent to the judgment. Riddell, J., also thought the case was governed by what was decided in *Stewart v. Henderson*, 30 O.L.R. 447, where the Court set aside so much of the judgment appealed from as directed an inquiry as to moneys thereafter received by the defendant in respect of which the plaintiff would be entitled to a commission. Mr. Justice Masten, besides relying on this case, also bases his judgment on the ground that the moneys now claimed, not being due when the action was commenced, cannot be recovered in the present action. No doubt it is the strict rule of law, that only the rights of the plaintiff as they existed at the date the writ issued can be adjudicated. But although as a general proposition that may be said, is it not a rule that is subject to some exceptions even at law? For instance, in the common case of interest payable on a covenant, it is the ordinary practice to give judgment for interest which has become due after the issue of the writ, and before judgment, as well as in the case where it is allowed by way of damages subsequent to the date of the writ. But in equity, es-