

1886

June 21.

Coram SIR W. J. RITCHIE, C. J.

THE ATTORNEY-GENERAL FOR THE } PLAINTIFF;
 PROVINCE OF ONTARIO..... }

AND

THE ATTORNEY-GENERAL FOR THE } DEFENDANT.
 DOMINION OF CANADA..... }

Appeal from order of judge in chambers—Insufficiency of statement of claim—Practice.

Where an order had been granted by a judge in chambers discharging a summons to fix the time and place of trial or hearing because the statement of claim did not disclose a proper case for the decision of the court, a motion by way of appeal therefrom to the court was dismissed by the presiding judge on the ground that he was not prepared to interfere with the order of another judge of the same court.

A STATEMENT of claim was filed in the court by the Attorney-General for the Province of Ontario, praying "that it may be declared that the personal property of persons domiciled within the Province of Ontario, dying intestate and leaving no next of kin or other person entitled thereto, other than Her Majesty, belongs to the province or to Her Majesty in trust for the province." The Attorney-General for the Dominion of Canada, in answer to the statement of claim, prayed that "it be declared that the personal property of persons who have died intestate in Ontario since Confederation, leaving no next of kin or other person entitled thereto, except Her Majesty, belongs to the Dominion of Canada, or to Her Majesty in trust for the Dominion of Canada."

No reply was filed, and upon an application by way of summons to Mr. JUSTICE GWYNNE in chambers, on the 9th June, 1886, for an order to fix the time and place of trial or hearing, the summons was discharged

on the ground that the pleadings did not present a proper case for the decision of the court.

On the 21st June, 1886, (SIR W. J. RITCHIE, C. J. presiding) *Irving*, Q. C., moved, by way of appeal from the order of MR. JUSTICE G-WYNNNE so granted in chambers, for an order to reverse such chambers' order and to fix the time and place of trial.

Per curiam: The presiding judge declines to interfere with the order of another judge of the same court, and the motion will be dismissed.

*Appeal dismissed, without costs.**

Solicitors for Plaintiff: *O'Gara & Remon.*

Solicitors for Defendant: *O'Connor & Hogg.*

*On appeal to the Supreme Court of Canada,

Held, affirming the decisions appealed from, that the pleadings did not disclose any matter in controversy in reference to which the court could be properly asked to adjudge, or which a judgment of the court could affect.

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 ———
 Reasons
 for
 Judgment.
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