

An appeal by the plaintiff from an order of HON. MR. JUSTICE RIDDELL, 23 O. W. R. 814; 4 O. W. N. 258.

The Appeal to Divisional Court was heard by HON. SIR JOHN BOYD, C., HON. MR. JUSTICE LATCHFORD, and HON. MR. JUSTICE MIDDLETON.

J. G. O'Donoghue, for the plaintiffs, appellants.

C. G. Jarvis, for the defendants, respondents.

THEIR LORDSHIPS' judgment was delivered by

HON. SIR JOHN BOYD, C. (V.V.):—We cannot disturb the order appealed from. I would put this decision on the ground that there is jurisdiction in the Court to stay proceedings in default of payment of interlocutory costs, especially if the action is vexatious, or if the plaintiff, in the course of it, acts vexatiously towards the defendant. The learned Judge appealed from has exercised this discretion, holding that the plaintiffs, in the course of the action, acted vexatiously towards the defendant, and thus imposed the payment of the prior costs as a test of the *bona fides* of the litigation. The judgment will be affirmed, with costs.

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