Had the interest of the McWilliamses in the transaction been disclosed, the Crown might have declined to issue the patent in derogation of the claim of defendants as licensees, so it was better in every aspect to secure defendants' assent.

I would affirm the judgment with costs.

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CARTWRIGHT, MASTER. MAY 9TH, 1906.

CHAMBERS.

## WOOSTER v. CANADA BRASS CO.

*Security for Costs—Plaintiff out of Jurisdiction—Property in Jurisdiction—Shares in Company.*

Motion by defendant Menzie for order requiring plaintiff to furnish security for costs of applicant.

Strachan Johnston, for applicant.

Z. Gallagher, for plaintiff.

THE MASTER:—It is admitted that plaintiff has left this province. But it is said that, as he is the owner of 50 shares in the defendant company, for which he had paid $5,000 cash, the motion should fail.

The statement of claim alleges that the defendant company "is insolvent and financially embarrassed, and has not and never had sufficient capital to carry on its business." The plaintiff therefore asks to have his subscription cancelled and to be repaid his $5,000, or else to be paid that sum as damages.

The argument of defendant Menzie is that these allegations of plaintiff shew that his shares are not such an asset as to be an answer to the motion. His counsel relied on the case of Walters v. Duggan, 33 C. L. J. 362. There it is said that in these cases there must be "plain and incontrovertible proof that plaintiff is in possession of sufficient property standing in his own name of which he is the beneficial owner, and which is easily exigible." This was affirmed on appeal by Meredith, C. J. See too, Parke v. Hale, 2 O. W. R. 1172.