

I also draw attention to the absence of any affidavit by the defendant company that the particulars asked for are necessary for pleading.

This omission is suggestive in face of the telegram of the plaintiff's solicitors. Following my previous decision in *Spalding v. Canadian Pacific Rw. Co.*, 9 O. W. R. 870, I think the motion should be dismissed with costs in the cause, and the statement of defence should be delivered in ten days.

This is without prejudice to a similar motion after discovery has been had if defendants think it necessary.

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HON. MR. JUSTICE LATCHFORD.                      SEPTEMBER 25TH, 1912.

WILLIAM PEACE CO. v. WILLIAM PEACE.

4 O. W. N.

*Injunction — Restraining Breach of Covenant — Not to Engage in Trade.*

An action for infringement of patent for metal weather strips, for an injunction restraining manufacture by the defendant of such weather strips in Hamilton, and for damages.

LATCHFORD, J., found defendant guilty of infringing his covenants with plaintiff company that he would not engage in business within five miles of Hamilton for 10 years, nor allow his name to be used in any similar business, and granted an injunction as prayed, with costs.

T. Hobson, K.C., for the plaintiffs.

A. O'Heir, for the defendant.

HON. MR. JUSTICE LATCHFORD:—I intend to reserve my decision as to whether the defendant has been guilty of any infringement of either of the patents which he transferred to the plaintiff company. Other phases of the case may, however, now be disposed of. The covenant on the part of the defendant contained in the agreement made in April, 1908, has to be construed strictly. So much is in favour of the defendant. He undertook for good consideration not to engage in any business for the manufacture of weather-strips within the city of Hamilton or within five miles of the limits of the said city during the period of ten years from the date of the agreement. He further covenanted that he would not allow his name to be used in connection