

may have to plaintiff's claim: Canadian Radiator Co. v. Cuthbertson, 9 O. L. R. 126, 5 O. W. R. 66.

The material filed when plaintiff obtained leave to issue and serve his writ is, no doubt, to a very great extent, displaced by the affidavits filed by defendant in support of the motion to set aside the writ. The original affidavits on behalf of plaintiff in answer upon this latter motion, which were before the Master in Chambers, are perhaps inadequate to meet the case for setting aside the writ and service made upon the material put in by defendant. Further affidavits, which plaintiff sought to use upon his appeal from the Master's order, the Chief Justice of the King's Bench declined to receive. With the discretion so exercised the Divisional Court most reluctantly interfered. But, in view of the fact that upon the present appeal being dismissed plaintiff may issue and serve a new writ, if the additional material now produced would warrant his being allowed to do so, it was thought better to allow him to file the additional affidavits which he seeks to use, and leave was accordingly given, defendant being allowed from 15th December, 1905, to 23rd February, 1906, to answer such affidavits and to produce an agreement said to be in his possession, which, it seemed to the Court, would be likely to shed much light upon the transactions involved in this litigation, and upon the connection of defendant therewith, and his liability to plaintiff. Defendant has declined to avail himself of the opportunity thus afforded him to controvert the supplemental affidavits filed on behalf of plaintiff, or to produce the agreement which the Court desired to see. . . .

The material filed alleges that defendant had stated himself to be "a member of the firm of Bullwell, Currie, & Co., and that Singleton had been his (defendant's) agent; that defendant was and is the chief moneyed man in the firm of Bullwell, Currie, & Co.; that his business name is Bullwell; and that he had employed Singleton as his agent, and was fully responsible for all Singleton's acts.

The affidavits fall short of establishing, even *prima facie*, that defendant is the sole principal in the business of Bullwell, Currie, & Co., though there is enough in them to found a suspicion that such is the fact. Although the statement of claim served with the writ alleges that defendant carries on business in the name of "Bullwell, Currie, & Co.," it also refers to Singleton as his "agent or partner."