

this action, they, as well as the Emperor, were at peace and in amity with our King and his subjects.

On the 31st July, the defendants obtained the usual præcipe order for security of costs. On the 21st September, the Master in Chambers made an order extending the time for the giving of security by the plaintiffs until Monday the 19th October, and further ordering that in default of such security being given this action should stand dismissed.

The plaintiffs now move in Chambers for an order staying all proceedings so long as it may be ordered, or for such further or other orders as may seem meet or just.

The defendants gave notice that on the return of the plaintiffs' motion they would move that the action be dismissed, on the ground that the plaintiffs are alien enemies.

As to the plaintiffs' notice of motion, I cannot see why the plaintiffs ought to be in any better position by reason of their having become alien enemies than they would be under ordinary circumstances; and their motion is therefore dismissed, and the dismissal of the action follows in pursuance of the Master's order.

As to the defendants' motion, it is quite clear upon the authorities that the plaintiffs, having become alien enemies, ought to be barred from further having and maintaining this action. See *Le Bret v. Papillon*, 4 East 502; *Brandon v. Nesbitt* (1794), 6 T.R. 23; *Mews' Digest*, vol. 8, pp. 210, 211.

The plaintiffs' action is, therefore, on this ground also, dismissed with costs. This dismissal is not necessarily—and I do not mean it to be—a bar to a subsequent action in respect of the same matter after peace shall have been declared: *Holmested & Langton's Judicature Act*, 3rd ed., p. 636.

FALCONBRIDGE, C.J.K.B.

OCTOBER 24TH, 1914.

DENTON v. TOSSY.

*Vendor and Purchaser—Agreement for Sale of Land—Escrow—Condition—Consent of Mortgagee—Failure to Notify—Delay—Action for Specific Performance—Discretion of Court—Return of Down-payment—Costs.*

Action for specific performance of the defendant's agreement for the purchase from the plaintiff of certain lands in the city of St. Catharines.