

## NATIONAL TRUST CO. v. TRUSTS AND GUARANTEE CO.—MASTER IN CHAMBERS—OCT. 10.

*Pleading—Statement of Defence—Embarrassment—Res Judicata—Dilatory Pleas—Parties—Motion to Add Defendant—Opposition of Plaintiff.*—Motion by the plaintiffs to strike out paragraphs 7, 8, and 10 of the statement of defence as embarrassing, and to strike out the words “and for the Imperial Plaster Company Limited” at the end of the statement of defence. Cross-motion by the defendants to have the Imperial Plaster Company Limited added as a defendant. The nature of the action appears from the note of the judgment of the Court of Appeal, 2 O.W.N. 1314. The paragraphs attacked by the plaintiffs’ motion set up that sec. 133 of the Dominion Winding-up Act was a bar to the action, and that the claim of the plaintiffs could be dealt with only in the winding-up. The Master said that this was the very point dealt with by the Court of Appeal; the pleading was embarrassing, because it brought forward a defence which the defendants were not entitled to make use of: Stratford Gas Co. v. Gordon, 14 P.R. 410, 414; Heugh v. Chamberlain, 25 W.R. 742. It was on the petition of the Imperial Plaster Company Limited that the winding-up order was made; and it was said that the presence of that company before the Court was necessary for the adjudication upon and settling of the questions arising in the action. The Master said that a defendant could be added against the wish of the plaintiff only in a very plain case: Imperial Paper Mills of Canada v. McDonald, 7 O.W.R. 472; and that here the necessity did not arise, as the action was at present properly constituted, so far as appeared. The defendants’ motion should be dismissed, and the plaintiffs’ motion should succeed both as to the paragraphs attacked and the words at the end. Costs of both motions to the plaintiffs in any event. Reference to the remarks of Middleton, J., in Goldfields Limited v. Harris Maxwell Co., 2 O.W.N. 1391, as to the abolition of dilatory pleas; also Odgers on Pleading, 5th ed., p. 141(a). R. C. H. Cassels, for the plaintiffs. W. Laidlaw, K.C., for the defendants.