

On the hearing of the motion, the plaintiffs asked leave to file a supplementary affidavit to the effect that, in the opinion of the deponent, the plaintiffs have a right to the relief claimed, and after the argument handed such an affidavit in.

I reserved the matter to see if I could or should make an order which would prevent what has been done being entirely abortive.

Upon consideration I am of the opinion, however, that the irregularities are of such a character that the proper disposition of the matter, in the circumstances, is to set aside the order and service, leaving the plaintiffs to commence their action afresh, if so advised.

The order and service will, therefore, be set aside with costs.

GNAM V. McNEIL—BRITTON, J.—APRIL 6.

Contract—Settlement of Action—Intervention of Stranger—Promise to Pay Costs—Withdrawal of Action—Performance of Promise—Failure to Prove Promise to Pay Damages—Statute of Frauds.—The plaintiff, who was the parish priest of Wyoming, in the Roman Catholic Diocese of London, Ontario, sued upon an agreement alleged to have been made between the plaintiff, by his solicitor, Mr. D. S. McMillan, and the defendant, the Archbishop of Toronto. The plaintiff and the Bishop of London had some differences, which resulted in an action instituted by the plaintiff against the Bishop. That action was ripe for trial in March, 1913, when the defendant intervened. The agreement, whatever it was, was not in writing. The plaintiff alleged that the agreement was, that, in consideration of his withdrawing the action against the Bishop of London, the defendant would pay the costs, fixed at \$650; that the plaintiff would be restored to his parish; that the defendant would personally "look after the damage end of it." The action against the Bishop of London was ended by an agreement between the solicitors on both sides that no further proceedings should be taken, and that there should be no costs to either party. The evidence was conflicting. The learned Judge accepts the defendant's statement as to what was promised—that nothing more was promised than that the defendant would pay the costs and would do what was in his power to procure for the plaintiff a hearing or trial by the Rota at Rome in reference to the whole case; and the learned Judge finds that the defendant has done all that he promised to do. At the trial leave